

3-3-2014

State v. Morris Clerk's Record Dckt. 41933

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,

Plaintiff-Respondent,

vs.

RICHARD GLENN MORRIS,

Defendant-Appellant.

Supreme Court Case No. 41933

CLERK'S RECORD ON APPEAL

Appeal from the District Court of the Fourth Judicial District, in and for the County of Ada.

HONORABLE MELISSA MOODY

JOHN C. DeFRANCO

ATTORNEY FOR APPELLANT

BOISE, IDAHO

LAWRENCE G. WASDEN

ATTORNEY FOR RESPONDENT

BOISE, IDAHO

State of Idaho vs. Richard Glenn Morris

Date	Code	User		Judge
9/17/2012	NCRF	PRSCHOKF	New Case Filed - Felony	Magistrate Court Clerk
	PROS	PRSCHOKF	Prosecutor assigned Bryce Ellsworth	Magistrate Court Clerk
	HRSC	TCMCCOSL	Hearing Scheduled (Video Arraignment 09/17/2012 01:30 PM)	Theresa Gardunia
	CRCO	TCMCCOSL	Criminal Complaint	Magistrate Court Clerk
	ORPD	TCMILLSA	Defendant: Morris, Richard Glenn Order Appointing Public Defender Public defender Ada County Public Defender [on the record in open court]	Magistrate Court Clerk
	ARRN	TCMILLSA	Hearing result for Video Arraignment scheduled on 09/17/2012 01:30 PM: Arraignment / First Appearance	Theresa Gardunia
	CHGA	TCMILLSA	Judge Change: Administrative	Cawthon / Irby
	HRSC	TCMILLSA	Hearing Scheduled (Preliminary 10/01/2012 08:30 AM)	Cawthon / Irby
	ORPD	MADEFRJM	Order Appointing Public Defender [file stamped 09/18/2012]	Cawthon / Irby
	ORPD	MADEFRJM	Order Appointing Public Defender [duplicate entry]	Cawthon / Irby
9/18/2012	MFBR	TCTONGES	Motion For Bond Reduction	Cawthon / Irby
	NOHG	TCTONGES	Notice Of Hearing	Cawthon / Irby
	RQDD	TCTONGES	Defendant's Request for Discovery	Cawthon / Irby
	NOPE	TCBROWJM	Notification of Penalties for Escape	Cawthon / Irby
9/24/2012	MTOC	TCTONGES	Motion to Consolidate/ FE-12-12803	Cawthon / Irby
	PHRD	TCTONGES	Preliminary Hearing Response to Request for Discovery and Objections / Second Supplemental	Cawthon / Irby
10/1/2012	CHGA	CCMANLHR	Judge Change: Administrative	John Hawley Jr.
	CONT	CCMANLHR	Continued (Preliminary 10/02/2012 08:30 AM)	John Hawley Jr.
10/2/2012	HRHD	CCMANLHR	Hearing result for Preliminary scheduled on 10/02/2012 08:30 AM: Hearing Held	John Hawley Jr.
	BOUN	CCMANLHR	Hearing result for Preliminary scheduled on 10/02/2012 08:30 AM: Bound Over (after Prelim)	John Hawley Jr.
	CHGA	CCMANLHR	Judge Change: Administrative	John Hawley Jr.
	ORDR	CCMANLHR	Order to Consolidate	John Hawley Jr.
	COMT	CCMANLHR	Commitment	John Hawley Jr.
	NOTH	CCMANLHR	Notice Of Hearing	John Hawley Jr.
10/3/2012	MFBR	TCTONGES	Motion For Bond Reduction	Melissa Moody
	NOHG	TCTONGES	Notice Of Hearing	Melissa Moody
	MOTN	TCTONGES	Motion for Preliminary hearing Transcript	Melissa Moody
10/4/2012	HRSC	TCTONGES	Hearing Scheduled (Hearing Scheduled 10/12/2012 01:30 PM)	Melissa Moody

State of Idaho vs. Richard Glenn Morris

Date	Code	User	Judge
10/4/2012	INFO	TCTONGES	Information
10/9/2012	PROS	PRHEBELE	Prosecutor assigned Daniel R. Dinger
10/11/2012	ORDR	DCJOHNSI	Order for Prelim Transcript
10/12/2012	DCHH	TCHOCA	Hearing result for Hearing Scheduled scheduled on 10/12/2012 01:30 PM: District Court Hearing Held Court Reporter: Mia Martorelli Number of Transcript Pages for this hearing estimated: 50
	PLEA	TCHOCA	A Plea is entered for charge: - NG (I37-2732(A)(1)(A)-P/I Controlled Substance-Possession With Intent to Manufacture or Deliver)
	HRSC	TCHOCA	Hearing Scheduled (Pretrial Conference 03/01/2013 11:00 AM)
	HRSC	TCHOCA	Hearing Scheduled (Jury Trial 03/11/2013 08:30 AM) 2 Days
	NOPT	TCCHRIKE	Notice of Preparation of Preliminary Hearing Transcript
10/16/2012	NOTC	TCHOCA	Notice of JT and PTC and List of Alternate Judges
11/2/2012	RSDS	TCTONGES	State/City Response to Discovery
	RQDS	TCTONGES	State/City Request for Discovery
11/6/2012	MOTE	TCTONGES	Motion to Enlarge Time
11/7/2012	TRAN	TCTONGES	Transcript Filed
11/8/2012	MOTS	TCTONGES	Motion to Suppress
	BREF	TCTONGES	Brief in Support of Motion to Suppress
	AFFD	TCTONGES	Affidavit of Richard Morris in Support of Motion to Suppress
11/14/2012	NOHG	TCTONGES	Notice Of Hearing
	HRSC	TCTONGES	Hearing Scheduled (Hearing Scheduled 12/10/2012 04:00 PM)
11/15/2012	ORDR	TCHOCA	Order Granting Enlarge Time 30 Additional Days
11/20/2012	RSPN	TCCHRIKE	State's Response to Defendant's Motion to Suppress and Request that Motion to Suppress be Denied Without an Evidentiary Hearing
12/4/2012	CONT	TCHOCA	Continued (Hearing Scheduled 12/14/2012 02:30 PM)
	NOTC	TCHOCA	Notice of Continued Hearing
12/7/2012	RQDD	TCTONGES	Defendant's Request for Discovery/ Specific
	RQDS	TCOLSOMC	State/City Request for Discovery / First Addendum
	RSPN	TCOLSOMC	Supplemental Response to Defendant's Motion to Suppress

State of Idaho vs. Richard Glenn Morris

Date	Code	User		Judge
12/11/2012	MOTS	TCTONGES	Response to State's Objection to Motion to Suppress	Melissa Moody
12/14/2012	DCHH	TCHOCA	Hearing result for Motion to Suppress scheduled on 12/14/2012 02:30 PM: District Court Hearing Held Court Reporter: Mia Martorelli Number of Transcript Pages for this hearing estimated: 150	Melissa Moody
	RSDD	TCCHRIKE	Defendant's Response to Discovery	Melissa Moody
12/20/2012	ORDR	DCABBOSM	Order Denying Motion to Suppress Evidence	Melissa Moody
2/5/2013	RSDS	TCWRIGSA	State/City Response to Discovery/ Specific	Melissa Moody
2/7/2013	NITU	TCTONGES	Notice of Intent to Present IRE 404(b) Evidence of Defendant's Prior Sales of Marijuana	Melissa Moody
2/8/2013	NOHG	TCCHRIKE	Notice Of Hearing	Melissa Moody
	HRSC	TCCHRIKE	Hearing Scheduled (Hearing Scheduled 03/01/2013 03:30 PM)	Melissa Moody
2/13/2013	RSDD	TCTONGES	Defendant's Response to Discovery/ second	Melissa Moody
2/28/2013	MOTN	TCHOCA	Motion for Leave to Present Testimony to Clarify the Record (Filed Under Seal)	Melissa Moody
			Document sealed	
3/1/2013	DCHH	TCHOCA	Hearing result for Pretrial Conference scheduled on 03/01/2013 11:00 AM: District Court Hearing Held Court Reporter: Mia Martorelli Number of Transcript Pages for this hearing estimated: 50	Melissa Moody
	DCHH	TCHOCA	Hearing result for Hearing Scheduled scheduled on 03/01/2013 03:30 PM: District Court Hearing Held Court Reporter: Mia Martorelli Number of Transcript Pages for this hearing estimated: 50	Melissa Moody
	CONT	TCHOCA	Continued (Jury Trial 04/22/2013 08:30 AM) 2 Days	Melissa Moody
	HRSC	TCHOCA	Hearing Scheduled (Motion 03/21/2013 03:30 PM)	Melissa Moody
3/6/2013	NOHG	TCCHRIKE	Notice Of Hearing	Melissa Moody
3/18/2013	OBJE	TCCHRIKE	Objection to State's Motion to Clarify Record	Melissa Moody
3/21/2013	ORDR	TCHOCA	Order Regarding Evidentiary Issues for Trial	Melissa Moody
	DCHH	TCHOCA	Hearing result for Motion scheduled on 03/21/2013 03:30 PM: District Court Hearing Held Court Reporter: Mia Martorelli Number of Transcript Pages for this hearing estimated: 50	Melissa Moody
3/22/2013	ORDR	DCABBOSM	Order Denying Motion to Present Testimony to Clarify Record	Melissa Moody

State of Idaho vs. Richard Glenn Morris

Date	Code	User		Judge
3/25/2013	MOTN	TCCHRIKE	Motion for Preparation of Transcript	Melissa Moody
	ORDR	TCHOCA	Order for Preparation of Transcript	Melissa Moody
3/29/2013	NOHG	TCTONGES	Notice Of Hearing	Melissa Moody
	HRSC	TCTONGES	Hearing Scheduled (Hearing Scheduled 04/04/2013 09:00 AM)	Melissa Moody
4/1/2013	MOTN	TCHOCA	Motion in Limine to Exclude Reference to Certain Facts (Filed Under Seal)	Melissa Moody
			Document sealed	
4/3/2013	HRVC	TCHOCA	Hearing result for Hearing Scheduled scheduled on 04/04/2013 09:00 AM: Hearing Vacated	Melissa Moody
	ORDR	DCABBOSM	Order Limiting Questioning at Trial	Melissa Moody
4/22/2013	JTST	DCKORSJP	Hearing result for Jury Trial scheduled on 04/22/2013 08:30 AM: Jury Trial Started 2 Days	D. Duff McKee
	DCHH	DCKORSJP	District Court Hearing Held Court Reporter: Kim Madsen Number of Transcript Pages for this hearing estimated: More than 200 Pages	D. Duff McKee
4/23/2013	HRSC	TCHOCA	Hearing Scheduled (Jury Trial 04/23/2013 09:00 AM) Day #2	D. Duff McKee
	DCHH	TCHOCA	Hearing result for Jury Trial scheduled on 04/23/2013 09:00 AM: District Court Hearing Held Court Reporter: Kim Madsen Number of Transcript Pages for this hearing estimated: Day #2/ 500	D. Duff McKee
	JUIN	TCHOCA	Jury Instructions Filed	Melissa Moody
	VERD	TCHOCA	Verdict Form	Melissa Moody
	FOGT	TCHOCA	Found Guilty After Trial of Lesser Included	Melissa Moody
	REDU	TCHOCA	Charge Reduced Or Amended (I37-2732(c)(3) {M} Controlled Substance-Possession of)	Melissa Moody
4/24/2013	HRSC	TCHOCA	Hearing Scheduled (Sentencing 05/03/2013 09:00 AM)	Melissa Moody
4/30/2013	CONT	TCHOCA	Continued (Sentencing 05/02/2013 02:00 PM)	Melissa Moody
5/2/2013	DCHH	TCHOCA	Hearing result for Sentencing scheduled on 05/02/2013 02:00 PM: District Court Hearing Held Court Reporter: N/A Number of Transcript Pages for this hearing estimated: 50	Melissa Moody
	FIGT	TCHOCA	Finding of Guilty (I37-2732(c)(3) {M} Controlled Substance-Possession of)	Melissa Moody
	JAIL	TCHOCA	Sentenced to Jail or Detention (I37-2732(c)(3) {M} Controlled Substance-Possession of) Confinement terms: Jail: 365 days. Suspended jail: 128 days. Credited time: 237 days.	Melissa Moody

Date: 4/10/2014

Fourth Judicial District Court - Ada County

User: TCWEGEKE

Time: 08:32 AM

ROA Report

Page 5 of 5

Case: CR-FE-2012-0013672 Current Judge: Melissa Moody

Defendant: Morris, Richard Glenn

State of Idaho vs. Richard Glenn Morris

Date	Code	User	Judge
5/2/2013	PROB	TCHOCA	Probation Ordered (I37-2732(c)(3) {M} Controlled Substance-Possession of) Probation term: 2 years 0 months 0 days. (Misdemeanor Unsupervised)
	STAT	TCHOCA	STATUS CHANGED: closed pending clerk action
	SNPF	TCHOCA	Sentenced To Pay Fine 1692.50 charge: I37-2732(c)(3) {M} Controlled Substance-Possession of
	JDMT	TCWEGEKE	Judgment of Conviction and Probation Order
2/12/2014	JDMT	DCVOLLCC	Amended Judgment of Conviction and Probation Order
3/3/2014	NOTA	TCLANGAJ	NOTICE OF APPEAL
	APSC	TCLANGAJ	Appealed To The Supreme Court
4/10/2014	NOTC	TCWEGEKE	Notice of Trasncript of 138 Pages Lodged - Supreme Court No. 41933

000006

SEP 17 2012

CHRISTOPHER D. RICH, Clerk
By STORMY McCORMACK
DEPUTY

DR # 12-217910

GREG H. BOWER
Ada County Prosecuting Attorney

Kari L Higbee
Deputy Prosecuting Attorney
200 W. Front Street, Room 3191
Boise, Idaho 83702
Telephone: (208) 287-7700

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,)

Plaintiff,)

vs.)

RICHARD GLENN MORRIS,)

Defendant.)

Case No. CR-FE-2012-00 13672

COMPLAINT


Morris's 

PERSONALLY APPEARED Before me this 17th day of September 2012, Kari L Higbee, Deputy Prosecuting Attorney, in and for the County of Ada, State of Idaho, who, being first duly sworn, complains and says: that RICHARD GLENN MORRIS, on or about the 1st day of August, 2012, in the County of Ada, State of Idaho, did commit the crime of POSSESSION OF A CONTROLLED SUBSTANCE WITH THE INTENT TO DELIVER, FELONY, I.C. §37-2732(a), 18-204 as follows:

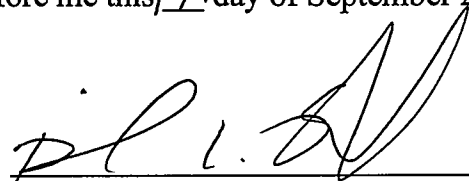
That the Defendant, RICHARD GLENN MORRIS, on or about the 1st day of August, 2012, in the County of Ada, State of Idaho, did, along with another, unlawfully possess a controlled substance, to-wit: Marijuana, a Schedule I non-narcotic controlled substance with the intent to deliver the aforementioned controlled substance.

All of which is contrary to the form, force and effect of the statute in such case and against the peace and dignity of the State of Idaho.

GREG H. BOWER
Ada County Prosecutor


Karl L. Higbee
Deputy Prosecuting Attorney

SUBSCRIBED AND Sworn to before me this 17th day of September 2012.


Magistrate

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

STATE OF IDAHO, ADA COUNTY, MAGISTRATE DIVISION

PROBABLE CAUSE FORM

STATE OF IDAHO

vs.

Richard G Morris

PROSECUTOR /s/ R. Scott Bandy

COMPLAINING WITNESS _____

CASE NO. _____

CLERK _____

DATE 9/15/12 TIME _____

TOXIMETER _____

CASE ID. _____ BEG. _____

END _____

JUDGE

- | | |
|-------------------------------------|--|
| <input type="checkbox"/> BEREZ | <input type="checkbox"/> MacGREGOR-IRBY |
| <input type="checkbox"/> BIETER | <input type="checkbox"/> MANWEILER |
| <input type="checkbox"/> CAWTHON | <input type="checkbox"/> McDANIEL |
| <input type="checkbox"/> COMSTOCK | <input type="checkbox"/> MINDER |
| <input type="checkbox"/> DAY | <input checked="" type="checkbox"/> OTHS |
| <input type="checkbox"/> GARDUNIA | <input type="checkbox"/> REARDON |
| <input type="checkbox"/> HARRIGFELD | <input type="checkbox"/> STECKEL |
| <input type="checkbox"/> HAWLEY | <input type="checkbox"/> SWAIN |
| <input type="checkbox"/> HICKS | <input type="checkbox"/> WATKINS |
| <input type="checkbox"/> _____ | |
| <input type="checkbox"/> _____ | |

STATUS

- ☒ WITNESS SWORN
- ☐ PC FOUND PCS w/intent to Del.
- ☐ COMPLAINT SIGNED
- ☐ AMENDED COMPLAINT SIGNED
- ☐ NO PC FOUND _____
- ☐ EXONERATE BOND
- ☐ SUMMONS TO BE ISSUED
- ☐ WARRANT ISSUED
- ☐ BOND SET \$ _____
- ☐ NO CONTACT

D.R. # _____

- ☐ DISMISS CASE
- ☐ IN CUSTODY

COMMENTS

1st PCS- int to deliver (P) (jud notice)

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

STATE OF IDAHO, ADA COUNTY, MAGISTRATE DIVISION

PROBABLE CAUSE FORM

STATE OF IDAHO

vs.

Richard Glenn Morris

PROSECUTOR K. Higbee

COMPLAINING WITNESS _____

CASE NO. FE 2012- 13672

CLERK H. Manley

DATE 9 / 17 / 2012 TIME 1039

CASE ID. Steckel 091712 BEG. 103938

COURTROOM 204 END 104005

JUDGE

☐ BEREZ
☐ BIETER
☐ CAWTHON
☐ COMSTOCK
☐ DAY
☐ GARDUNIA
☐ HARRIGFELD
☐ HAWLEY
☐ HICKS

☐ MacGREGOR-IRBY
☐ MANWEILER
☐ McDANIEL
☐ MINDER
☐ OTHS
☐ REARDON
☒ STECKEL
☐ SWAIN
☐ WATKINS

STATUS

☒ STATE SWORN
☒ PC FOUND
☒ COMPLAINT SIGNED
☐ AMENDED COMPLAINT SIGNED
☐ AFFIDAVIT SIGNED
☒ JUDICIAL NOTICE TAKEN
☐ NO PC FOUND
☐ EXONERATE BOND
☐ SUMMONS TO BE ISSUED
☐ WARRANT ISSUED
☐ BOND SET \$
☐ NO CONTACT

D.R. # _____

☐ DISMISS CASE
☒ IN CUSTODY

COMMENTS

☐ AGENT'S WARRANT

☐ RULE 5(B)

☐ FUGITIVE

☐ MOTION & ORDER TO CONSOLIDATE

ADA COUNTY MAGISTRATE MINUTES

Richard Glenn Morris CR-FE-2012-0013672

Scheduled Event: Video Arraignment Monday, September 17, 2012 01:30 PM

Judge: Theresa Gardunia

Clerk: SA

Interpreter:

Prosecuting Agency: X AC BC EA GC MC Pros: R BLEAZARD

PD / Attorney: L ESTESS

• 1 I37-2732(A)(1)(A)-P/I Controlled Substance-Possession With Intent to Manufacture or Deliver F

23314 Case Called Defendant: X Present Not Present X In Custody

X Advised of Rights Waived Rights X PD Appointed Waived Attorney

Guilty Plea / PV Admit N/G Plea Advise Subsequent Penalty

X Bond \$ 25,000 ROR Pay / Stay Payment Agreement

In Chambers PT Memo Written Guilty Plea No Contact Order

PRELIM 10/01/12 @ 830am
w/ CUSTODY/RBY

Finish () Release Defendant

000011

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA
MAGISTRATE DIVISION**

STATE OF IDAHO,
Plaintiff.

vs.

Richard Glenn Morris
7210 Brentwood
Boise, ID 83709
Defendant.

Case No: CR-FE-2012-0013672

**NOTICE OF APPOINTMENT OF PUBLIC DEFENDER
AND SETTING CASE FOR HEARING**

☒ Ada ☐ Boise ☐ Eagle ☐ Garden City ☐ Meridian

TO: Ada County Public Defender

YOU ARE HEREBY NOTIFIED that you are appointed to represent the defendant in this cause, or in the District Court until relieved by court order. The case is continued for:

Preliminary Monday, October 01, 2012 08:30 AM
Judge: Cawthon / Irby

BOND AMOUNT: _____ The Defendant is: ☐ In Custody ☐ Released on Bail ☐ ROR

TO: The above named defendant

IT HAS BEEN ORDERED BY THIS COURT that the defendant is to contact the Ada County Public Defender's Office at 200 W. Front Street, Room 1107, Boise, Idaho 83702. Telephone: (208) 287-7400. If the defendant is unable to post bond and obtain his/her release from jail, that the proper authorities allow the defendant to make a phone call to the Ada County Public Defender.

IT HAS BEEN FURTHER ORDERED: That the parties, prior to the pre-trial conference, complete and comply with Rule 16 I.C.R. and THAT THE DEFENDANT BE **PERSONALLY PRESENT** AT BOTH THE PRE-TRIAL CONFERENCE AND / OR THE JURY TRIAL: FAILURE TO APPEAR AT EITHER THE PRE-TRIAL CONFERENCE OR THE JURY TRIAL WILL RESULT IN A **BENCH WARRANT** FOR THE DEFENDANT'S **ARREST**.

I hereby certify that copies of this Notice were served as follows on this date Monday, September 17, 2012.

Defendant: Mailed _____ Hand Delivered X Signature [Signature]
Clerk / date _____ Phone () 917-12

Prosecutor: Interdepartmental Mail _____

Public Defender: Interdepartmental Mail X

[Signature]
Deputy Clerk

400
PH
10/1
8:30

ADA COUNTY PUBLIC DEFENDER
Attorneys for Defendant
200 West Front Street, Suite 1107
Boise, Idaho 83702
Telephone: (208) 287-7400
Facsimile: (208) 287-7409

NO. _____
A.M. _____ FILED P.M. _____ 345

SEP 18 2012

CHRISTOPHER D. RICH, Clerk
By KATRINA CHRISTENSEN
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff

vs.

RICHARD GLENN MORRIS,

Defendant.

Case No. CR-FE-2012-0013672

MOTION FOR BOND REDUCTION

COMES NOW, RICHARD GLENN MORRIS, the above-named defendant, by and through counsel STEVEN A BOTIMER, Ada County Public Defender's office, and moves this Court for its ORDER reducing bond in the above-entitled matter upon the grounds that the bond is so unreasonably high that the defendant, who is an indigent person without funds, cannot post such a bond, and for the reason that the defendant has thereby been effectively denied their right to bail.

DATED, Tuesday, September 18, 2012.

Steven A Botimer

STEVEN A BOTIMER
Attorney for Defendant

CERTIFICATE OF MAILING

I HEREBY CERTIFY, that on Tuesday, September 18, 2012, I mailed a true and correct copy of the within instrument to:

BRYCE ELLSWORTH
Counsel for the State of Idaho

by placing said same in the Interdepartmental Mail.

Bryce Ellsworth

MOTION FOR BOND REDUCTION

000013

ADA COUNTY PUBLIC DEFENDER
Attorneys for Defendant
200 West Front Street, Suite 1107
Boise, Idaho 83702
Telephone: (208) 287-7400
Facsimile: (208) 287-7409

NO. _____ FILED _____ 345
A.M. _____ P.M. _____

SEP 18 2012

CHRISTOPHER D. RICH, Clerk
By KATRINA CHRISTENSEN
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,
Plaintiff

vs.

RICHARD GLENN MORRIS,
Defendant.

Case No. CR-FE-2012-0013672

NOTICE OF HEARING

TO: THE STATE OF IDAHO, Plaintiff, and to BRYCE ELLSWORTH:

YOU, AND EACH OF YOU, are hereby notified that the defendant will call for a hearing on MOTION FOR BOND REDUCTION, now on file in the above-entitled matter, on Monday, October 01, 2012, at the hour of 08:30 AM , in the courtroom of the above-entitled court, or as soon thereafter as counsel may be heard.

DATED, Tuesday, September 18, 2012.



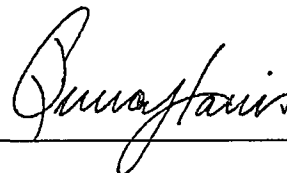
STEVEN A BOTIMER
Attorney for Defendant

CERTIFICATE OF MAILING

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BRYCE ELLSWORTH
Counsel for the State of Idaho

by placing said same in the Interdepartmental Mail.



NOTICE OF HEARING

000014

ADA COUNTY PUBLIC DEFENDER
Attorneys for Defendant
200 West Front Street, Suite 1107
Boise, Idaho 83702
Telephone: (208) 287-7400
Facsimile: (208) 287-7409

NO. _____ FILED 345
A.M. _____ P.M.

SEP 18 2012

CHRISTOPHER D. RICH, Clerk
By KATRINA CHRISTENSEN
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff

vs.

RICHARD GLENN MORRIS,

Defendant.

Case No. CR-FE-2012-0013672

REQUEST FOR DISCOVERY

TO: THE STATE OF IDAHO, Plaintiff, and to ADA COUNTY PROSECUTOR:

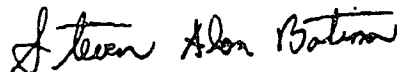
PLEASE TAKE NOTICE, that the undersigned, pursuant to ICR 16, requests discovery and photocopies of the following information, evidence, and materials:

- 1) All **unredacted** material or information within the prosecutor's possession or control, or which thereafter comes into his possession or control, which tends to negate the guilt of the accused or tends to reduce the punishment thereof. ICR 16(a).
- 2) Any **unredacted**, relevant written or recorded statements made by the defendant, or copies thereof, within the possession, custody or control of the state, the existence of which is known or is available to the prosecuting attorney by the exercise of due diligence; and also the substance of any relevant, oral statement made by the defendant whether before or after arrest to a peace officer, prosecuting attorney or the prosecuting attorney's agent; and the recorded testimony of the defendant before a grand jury which relates to the offense charged.
- 3) Any **unredacted**, written or recorded statements of a co-defendant; and the substance of any relevant oral statement made by a co-defendant whether before or after arrest in response to interrogation by any person known by the co-defendant to be a peace officer or agent of the prosecuting attorney.
- 4) Any prior criminal record of the defendant and co-defendant, if any.
- 5) All **unredacted** documents and tangible objects as defined by ICR 16(b)(4) in the possession or control of the prosecutor, which are material to the defense, intended for use by the prosecutor or obtained from or belonging to the defendant or co-defendant.

- 6) All reports of physical or mental examinations and of scientific tests or experiments within the possession, control, or knowledge of the prosecutor, the existence of which is known or is available to the prosecutor by the exercise of due diligence.
- 7) A written list of the names, addresses, records of prior felony convictions, and written or recorded statements of all persons having knowledge of facts of the case known to the prosecutor and his agents or any official involved in the investigatory process of the case.
- 8) A written summary or report of any testimony that the state intends to introduce pursuant to rules 702, 703, or 705 of the Idaho Rules of Evidence at trial or hearing; including the witness' opinions, the facts and data for those opinions, and the witness' qualifications.
- 9) All reports or memoranda made by police officers or investigators in connection with the investigation or prosecution of the case, including what are commonly referred to as "ticket notes."
- 10) Any writing or object that may be used to refresh the memory of all persons who may be called as witnesses, pursuant to IRE 612.
- 11) Any and all audio and/or video recordings made by law enforcement officials during the course of their investigation.
- 12) Any evidence, documents, or witnesses that the state discovers or could discover with due diligence after complying with this request.

The undersigned further requests written compliance within 14 days of service of the within instrument.

DATED, Tuesday, September 18, 2012.



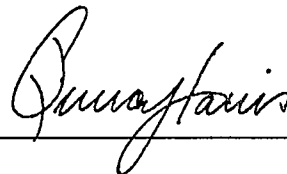
STEVEN A BOTIMER
Attorney for Defendant

CERTIFICATE OF MAILING

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ADA COUNTY PROSECUTOR
Counsel for the State of Idaho

by placing said same in the Interdepartmental Mail.



FILED 9/18/12 AT 930 .M.
 CHRISTOPHER D. RICH,
 CLERK OF THE DISTRICT COURT
 BY J. M. Brown
 Deputy

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
 STATE OF IDAHO, ADA COUNTY

STATE OF IDAHO,)
)
 Plaintiff,)
)
 vs.)
)
Morris)
 Defendant.)
)
 SSN: XXX-XX-)

CASE NO. FE-12-13672
 NOTIFICATION OF CONSEQUENCES AND
 PENALTIES FOR ESCAPE PURSUANT TO
 I.C. §§ 18-2505, 2506

TO: THE ABOVE-NAMED DEFENDANT, YOU ARE HEREBY NOTIFIED AS FOLLOWS:

I.C. § 18-2505 (1) Every prisoner charged with, convicted of, or on probation for a **felony** who is confined in any correctional facility, as defined in section 18-101A, Idaho Code, including any private correctional facility, or who while outside the walls of such correctional facility in the proper custody of any officer or person, or while in any factory, farm or other place without the walls of such correctional facility, who escapes or attempts to escape from such officer or person, or from such correctional facility, or from such factory, farm or other place without the walls of such correctional facility, shall be guilty of a **felony**, and upon conviction thereof, any such second term of imprisonment shall commence at the time he would otherwise have been discharged. A **felony is punishable by fine not exceeding fifty thousand dollars (\$50,000.00) or imprisonment in the state prison not to exceed five (5) years or both.**

I.C. § 18-2506 (1)(a) Every prisoner charged with or convicted of a **misdemeanor** who is confined in any county jail or other place or who is engaged in any county work outside of such jail or other place, or who is in the lawful custody of any officer or person, who escapes or attempts to escape therefrom, is guilty of a **misdemeanor**. A **misdemeanor is punishable by fine not exceeding \$1000.00 or by imprisonment in the county jail not to exceed one (1) year or both.**

(b) In cases involving escape or attempted escape by use of threat, intimidation, force, violence, injury to person or property other than that of the prisoner, or wherein the escape or attempted escape was perpetrated by use or possession of any weapon, tool, instrument or other substance, the prisoner shall be guilty of a **felony**.

Escape shall be deemed to include abandonment of a job site or work assignment without the permission of an employment supervisor or officer. Escape includes the intentional act of leaving the area of restriction set forth in a court order admitting a person to bail or release on a person's own recognizance with electronic or global positioning system tracking, monitoring and detention or the area of restriction set forth in a sentencing order, except for leaving the area of restriction for the purpose of obtaining emergency medical care.

I ACKNOWLEDGE RECEIPT OF THIS WRITTEN NOTICE.

DEFENDANT

DATE

400
PH
10/1
8:30

NO. _____ FILED _____
A.M. _____ P.M. _____

SEP 24 2012

CHRISTOPHER D. RICH, Clerk
By KATRINA CHRISTENSEN
DEPUTY

GREG H. BOWER

Ada County Prosecuting Attorney

Bryce B. Ellsworth

Deputy Prosecuting Attorney

200 W. Front Street, Room 3191

Boise, Idaho 83702

Telephone: (208) 287-7700

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,

Plaintiff,

vs.

CHRYSTAL ROSE PHILLIPS and

RICHARD GLENN MORRIS,

Defendants.

Case No. CR-FE-2012-0012803

CR-FE-2012-0013672

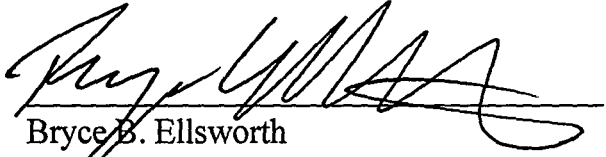
MOTION TO CONSOLIDATE

COMES NOW, Bryce B. Ellsworth, Deputy Prosecuting Attorney in and for the State of Idaho, County of Ada, and hereby moves this Honorable Court in the above entitled matter for an Order pursuant to Rule 13 of the Idaho Criminal Rules of Practice and Procedure consolidating criminal case CR-FE-2012-0012803 with criminal case CR-FE-2012-0013672 on the grounds and for the reasons that the facts, evidence and

witnesses are the same in each case. An Order of consolidation would save witness and jury time and the expense for a separate and later trial.

DATED this 24th day of September, 2012.

GREG H. BOWER
Ada County Prosecuting Attorney



Bryce B. Ellsworth
Deputy Prosecuting Attorney

SEP 24 2012

CHRISTOPHER D. RICH, Clerk
By KATRINA CHRISTENSEN
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

Bryce B. Ellsworth
Deputy Prosecuting Attorney
200 W. Front Street, Room 3191
Boise, Idaho 83702-5954
Telephone: (208) 287-7700

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,)	
	)	Case No. CR-FE-2012-0013672
Plaintiff,)	
vs.	)	SECOND SUPPLEMENTAL
	)	PRELIMINARY HEARING
RICHARD GLENN MORRIS,	)	RESPONSE TO REQUEST FOR
	)	DISCOVERY AND OBJECTIONS
Defendant.)	
_____)	

COMES NOW, Bryce B. Ellsworth, Deputy Prosecuting Attorney, in and for the County of Ada, State of Idaho, and submits the following Preliminary Hearing Response to the Request for Discovery and Objections and informs the Court that the State has complied with the Defendant's Request for Discovery as outlined below.

I. DISCLOSURES

16-A Brady-Agurs Disclosure: The prosecution is unaware of any evidence that is exculpatory on its face relating to the offense charged.

With regard to evidence that may be exculpatory as used or interpreted, the prosecution requests that the defense counsel submit, in writing, the defense to be asserted in this case so the prosecution can review its file to determine if any facts, evidence or witnesses may be material to the preparation of that defense. In the alternative, the prosecution offers to defense counsel an open

file policy to review those documents in the control and possession of the prosecution that may be exculpatory in some manner to the offense charged.

16-B Stipulation - Request Disclosure:

1. Statement of Defendant: The State has complied with discovery by providing the known statements of the Defendant that are contained in documents and items the State currently has in its possession and will comply with discovery as more information becomes available, as follows:

- a. Audio Taped Confession/Statement, if any exists
- b. Video Taped Confession/Statement, if any exists
- c. Written Confession/Statement, if any exists
- d. As reflected in Police Reports
- e. As reflected in booking sheets

2. Statement of Co-Defendant: See disclosed police reports for statements of Co-Defendant, if any exists.

3. Defendant's Prior Record: The Defendant's prior record disclosed in the following:

- a. NCIC report

4A. Documents and Tangible Objects: Police Reports, Witness Statements, Medical records and/or other tangible documents in possession of the Ada County Prosecutor's Office as of the date of filing of this document disclosed as State's pages 36 through 37. Pursuant to I.C.R. 16(d), the State has provided an unredacted discovery packet for defense counsel and a redacted packet of discovery for the defendant. The unredacted packet of discovery is not to be disclosed to the defendant or to the defendant's family pursuant to I.C.R. 16(d) without the consent of the prosecuting attorney or an order of the court upon a showing of need.

i. Audio/video recordings: The State will provide audio and/or video recordings when they are received, if any exists, in this case. The State will provide unredacted audio and/or video to defense counsel marked "Confidential," which are not to be shared with the defendant or the defendant's family pursuant to I.C.R. 16(d) without the consent of the prosecuting attorney or an order of the court upon a showing of need. At the preliminary hearing level, upon request, the State will provide redacted audio/video to defense counsel so that redacted audio/video may be shared with the defendant.

B. Photographs: The State will comply with such request as it receives photographs, maps, charts or diagrams, if any exist, in this case.

5. Reports of Examinations and Tests:

☒ The State will comply with such request as it receives reports of examinations and tests, if any exist, in this case.

☒ These documents are specifically identified in subsection 4A above.

6. Witnesses: A list of names identifying witnesses and protected contact information has been provided to defense counsel in a letter under separate cover, which is not to be disclosed to the defendant or to the defendant's family pursuant to I.C.R. 16(d) without the consent of the prosecuting attorney or an order of the court upon a showing of need. The State has provided to defense counsel a separate redacted witness list excluding protected information that can be shared with the defendant.

7. Expert Witnesses: The State will comply with such request as it identifies expert witnesses, if any exist, in this case.

☒ The State will comply with such request as it receives reports of examinations and tests, if any exist, in this case.

☒ These witnesses have been identified in a letter to defense counsel as described above in subparagraph 6 above.

8. Police Reports: The State possesses police reports, witness statements and other documents which are available upon request. These documents are specifically identified in subparagraph 4(A) above.

II. OBJECTIONS

A. The State has excluded the identity of the Confidential Informant from this Discovery Response. The grounds for this objection is/are as follows. Pursuant to I.C.R. 16(g)(2) and I.R.E. 509, the identity of a Confidential Informant is excluded unless said Informant is to be produced as a witness at a hearing or trial, subject to any protective order under I.C.R. 16(l) or a disclosure order under Rule 16(b)(9).

B. The State objects to any items in the defendant's request for discovery that would be in violation of state or federal law as follows and requests that if this Court rules that disclosure is required, that this Court also issue a protective order pursuant to I.C.R. 16(l):

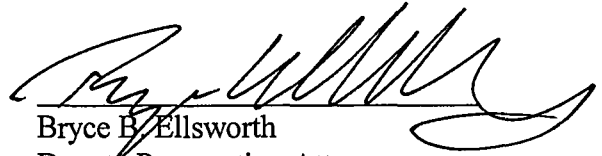
☒ NCIC criminal history for all witnesses. The State is not permitted to use NCIC for this purpose pursuant to federal law and hereby objects to providing this material.

- ☒ A police officer(s)' internal affairs files and/or other personnel documents. Personnel documents are confidential matters pursuant to State law. The State hereby objects to providing this material.
- ☐ Other

RESPECTFULLY SUBMITTED this 24th day of September 2012.

GREG H. BOWER

Ada County Prosecuting Attorney


Bryce B. Ellsworth
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on this 24 day of September 2012, I caused to be served, a true and correct copy of the foregoing Preliminary Hearing Response to Request for Discovery and Objections upon the individual(s) named below in the manner noted:

Steven Botimer, Ada County Public Defender, 200 W. Front St. Rm. 1107, Boise, Idaho 83702

- ☐ By depositing copies of the same in the United States mail, postage prepaid, first class.
- ☒ By depositing copies of the same in the Interdepartmental Mail.
- ☐ By hand delivering copies of the same to defense counsel.
- ☐ By informing the office of said individual(s) that said copies were available for pickup at the Office of the Ada County Prosecutor.
- ☐ By faxing copies of the same to said attorney(s) at the facsimile number: _____



FILED 10/1/12 AT 10/1/12 M.
CHRISTOPHER D. RICH,
CLERK OF THE DISTRICT COURT
BY Amery
Deputy

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff,

vs.

Richard Glenn Morris

Defendant.

PRELIMINARY HEARING NOTICE / MINUTE SHEET

Case Number Fe 2012-13672

Case Called Cawthon 100809

☒ Ada ☐ Special B. Ellsworth

☒ PD Attorney S Botimer

Defendant: ☒ Present ☐ Not Present ☒ In Custody ☐ PD Appointed ☐ Waived Attorney

☐ Advised of Rights ☐ Waived Rights ☐ In Chambers ☐ Interpreter

☐ Bond \$ 25,000 ☐ Motion for Bond Reduction Denied / Granted

☐ Amended Complaint Filed ☐ Complaint Amended by Interlineation ☐ Reading of Complaint Waived

☒ State / Defense / Mutual Request for Continuance Co-D set for tomorrow

☒ State / Defense Objection / ~~No Objection~~ to Continuance Before Leg Hrg today (14th day)

☐ Case continued to 10/2/12 at 8:30 am/pm for PH

☐ Defendant Waives Preliminary Hearing ☐ Hearing Held ☐ Commitment Signed

☐ Case Bound Over to Judge on at am/pm

☐ Case Dismissed after Preliminary Hearing / On State's Motion ☐ Release Defendant, This Case Only

It finds good cause to continue to 10/2/12 @ 8:30

ADA COUNTY COURTHOUSE, 200 W. FRONT ST., BOISE, ID 83702

You must appear as scheduled above. Failure to do so will result in a warrant being issued for your arrest.

DATED 10/1/12

CHRISTOPHER D. RICH, Clerk of the District Court

By: Amery
Deputy Clerk

I hereby certify that copies of this notice were served as follows:

Defendant ☒ Hand Delivered

Defense Attorney ☐ Hand Delivered

Public Defender ☐ Hand Delivered

Prosecutor ☒ Hand Delivered

Signature S. b.

Clerk h Date 10/1/12

000024

<u>Time</u>	<u>Speaker</u>	<u>Note</u>
<u>1:50:41 PM</u>	Defendant	Richard Glenn Morris FE-2012-13672
<u>1:50:44 PM</u>	State	Bryce Ellsworth AC Prosecutor
<u>1:50:48 PM</u>	Defense`	Reed Smith Attorney for the Defense
<u>1:50:50 PM</u>	Judge	Judge John Hawley
<u>1:50:53 PM</u>	Defendant	Richard Glenn Morris Present in Custody
<u>1:51:12 PM</u>	Bryce Ellsworth AC Prosecutor	Asks for the Co-Defendant to be removed from the courtroom - potential witness
<u>1:51:49 PM</u>	Witness #1	Officer James Cromwell, Sworn
<u>1:52:40 PM</u>	Bryce Ellsworth AC Prosecutor	Direct Examination of the Witness
<u>1:52:40 PM</u>	Officer James Cromwell	Police Officer for City of Boise
<u>1:53:14 PM</u>	Officer James Cromwell	Pulled over a vehicle for suspected DUI
<u>1:54:46 PM</u>	Officer James Cromwell	Canine officer arrived
<u>1:56:00 PM</u>	Reed Smith Attorney for the Defense	Cross Examination of the Witness
<u>1:56:00 PM</u>		
<u>1:59:08 PM</u>	Officer James Cromwell	Audio Recorder was on
<u>2:00:31 PM</u>	Officer James Cromwell	Noticed the smell of marijuana
<u>2:02:58 PM</u>	Bryce Ellsworth AC Prosecutor	re-Direct Examination of the Witness
<u>2:03:04 PM</u>	Bryce Ellsworth AC Prosecutor	Reviews his report to refresh his recollection
<u>2:03:48 PM</u>	Officer James Cromwell	I placed him in handcuffs
<u>2:04:09 PM</u>	Officer James Cromwell	Nothing further, witness steps down
<u>2:04:13 PM</u>	Witness #2	Officer Marshall Plaisted, Sworn
<u>2:05:13 PM</u>	Bryce Ellsworth AC Prosecutor	Direct Examination of the Witness
<u>2:05:14 PM</u>	Officer Marshall Plaisted	Boise Police Department, - Explains training
<u>2:05:28 PM</u>		
<u>2:06:38 PM</u>	Officer Marshall Plaisted	Strong odor of Marijuana
<u>2:07:02 PM</u>	Reed Smith Attorney for the Defense	Objection - Hearsay
<u>2:07:06 PM</u>	Judge John Hawley	Sustained
<u>2:07:31 PM</u>	Officer Marshall Plaisted	lunged for the females purse

<u>2:08:27 PM</u>	Reed Smith Attorney for the Defense	Cross Examination of the Witness
<u>2:08:27 PM</u>		
<u>2:10:00 PM</u>	Reed Smith Attorney for the Defense	Objection - Asked and Answered
<u>2:10:10 PM</u>	Judge John Hawley	Overruled
<u>2:11:55 PM</u>	Officer Marshall Plaisted	Explains "Quing"
<u>2:17:17 PM</u>	Officer Marshall Plaisted	I stood back by the cars, didn't speak with the individuals after the sniff
<u>2:17:37 PM</u>	Officer Marshall Plaisted	Nothing further, witness steps down
<u>2:17:44 PM</u>	Witness #3	Officer Perry Markle, Sworn
<u>2:18:44 PM</u>	Bryce Ellsworth AC Prosecutor	Direct Examination of the Witness
<u>2:18:45 PM</u>	Officer Perry Markle	Boise Police Department
<u>2:18:54 PM</u>		tested
<u>2:20:07 PM</u>	Officer Perry Markle	tested the suspected marijuana
<u>2:20:33 PM</u>	Reed Smith Attorney for the Defense	Cross Examination of the Witness
<u>2:20:33 PM</u>	Officer Perry Markle	Crystal Phillips was sitting on the passenger side
<u>2:24:24 PM</u>	Reed Smith Attorney for the Defense	officers discretion
<u>2:25:25 PM</u>	Officer Perry Markle	Nothing further, witness steps down
<u>2:25:30 PM</u>	Bryce Ellsworth AC Prosecutor	Moves to admit states #1 - Lab report
<u>2:26:59 PM</u>	Reed Smith Attorney for the Defense	Not sure there was a proper foundation in regards to the lab
<u>2:27:26 PM</u>	Judge John Hawley	States #1 is admitted
<u>2:27:41 PM</u>	Witness #4	Detective Clay Christensen, Sworn
<u>2:28:13 PM</u>	Bryce Ellsworth AC Prosecutor	Direct Examination of the Witness
<u>2:28:14 PM</u>	Detective Clay Christensen	Narcotics Det with BPD
<u>2:28:35 PM</u>	Detective Clay Christensen	8-1-12
<u>2:29:43 PM</u>	Detective Clay Christensen	Interview - inquired where he obtained the marijuana
<u>2:30:21 PM</u>	Detective Clay Christensen	Never denied
<u>2:30:51 PM</u>	Reed Smith Attorney for the Defense	Cross Examination of the Witness
<u>2:30:51 PM</u>	Bryce Ellsworth AC Prosecutor	objection
<u>2:35:31 PM</u>	Reed Smith Attorney for the Defense	objection - relevance

<u>2:35:44 PM</u>	Judge John Hawley	objection - sustained
<u>2:37:35 PM</u>	Detective Clay Christensen	he was engaged in the selling of marijuana when he was stopped
<u>2:39:11 PM</u>	Detective Clay Christensen	Under 3 oz unless it is proven to be possession with intent
<u>2:40:41 PM</u>	Detective Clay Christensen	Nothing further, witness steps down
<u>2:40:58 PM</u>		submits
<u>2:41:01 PM</u>	Reed Smith Attorney for the Defense	Closing Statement
<u>2:41:38 PM</u>	Bryce Ellsworth AC Prosecutor	Rebuttal
<u>2:41:52 PM</u>	Judge John Hawley	Finds PC
<u>2:43:23 PM</u>		Judge Finds PC, Case Bound Over to Judge Moody 10-12-12 at 1:30 PM commitment Signed
<u>2:43:38 PM</u>		state signs for exhibits
<u>2:43:48 PM</u>		End of Case

OCT 02 2012

CHRISTOPHER D. RICH, Clerk
By HEIDI MANLEY
DEPUTY

RECEIVED
SEP 24 2012
Ada County Clerk

GREG H. BOWER
Ada County Prosecuting Attorney

Bryce B. Ellsworth
Deputy Prosecuting Attorney
200 W. Front Street, Room 3191
Boise, Idaho 83702
Telephone: (208) 287-7700

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,)	
)	
Plaintiff,	)	Case No. CR-FE-2012-0012803
	)	CR-FE-2012-0013672
vs.)	
)	
CHRYSTAL ROSE PHILLIPS and	)	ORDER TO CONSOLIDATE
RICHARD GLENN MORRIS,)	
)	
Defendants.)	
_____)	

This Motion for Consolidation having come before me and good cause being shown,
IT IS HEREBY ORDERED AND THIS DOES ORDER that the Motion to
Consolidate be granted.

DATED this *2nd* day of *OCTOBER*, 2012.

[Signature]
Judge

OCT 02 2012

CHRISTOPHER D. RICH, Clerk
By HEIDI MANLEY
DEPUTY

GREG H. BOWER

Ada County Prosecuting Attorney

Bryce B. Ellsworth

Deputy Prosecuting Attorney

200 W. Front Street, Room 3191

Boise, Idaho 83702

Phone: 287-7700

Fax: 287-7709

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff,

vs.

RICHARD GLENN MORRIS,

Defendant.

Case No. CR-FE-2012-0013672

COMMITMENT

Defendant's


THE ABOVE NAMED DEFENDANT, RICHARD GLENN MORRIS, having been brought before this Court for a Preliminary Examination on the 2 day of OCT, 2012, on a charge that the Defendant on or about the 1st day of August, 2012, in the County of Ada, State of Idaho, did commit the crime(s) of: POSSESSION OF A CONTROLLED SUBSTANCE WITH THE INTENT TO DELIVER, FELONY, I.C. §37-2732(a), 18-204 as follows:

That the Defendant, RICHARD GLENN MORRIS, on or about the 1st day of August, 2012, in the County of Ada, State of Idaho, did, along with another, unlawfully possess a controlled substance, to-wit: Marijuana, a Schedule I non-narcotic controlled substance with the intent to deliver the aforementioned controlled substance.

The Defendant having so appeared and having had/having waived preliminary examination, the Court sitting as a Committing Magistrate finds that the offense charged as set forth has been committed in Ada County, Idaho, and that there is sufficient cause to believe that the Defendant is guilty of committing the offense as charged.

WHEREFORE, IT IS ORDERED that the Defendant be held to answer to the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada, to the charge herein set forth. Bail is set in the sum of \$ 25,000.⁰⁰.

DATED this 2 day of OCTOBER, 2012.


MAGISTRATE

FILED 10/2/12 AT 244P M.
CHRISTOPHER D. RICH,
CLERK OF THE DISTRICT COURT
BY Amery
Deputy

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff,

vs.

Richard Glenn Morris
Defendant.

PRELIMINARY HEARING NOTICE / MINUTE SHEET

Case Number FE 2012 13672

Case Called Hawley 91846 / 15041

☒ Ada ☐ Special B. Ellsworth
☒ PD Attorney R. Smith

Defendant: ☒ Present ☐ Not Present ☒ In Custody ☐ PD Appointed ☐ Waived Attorney

☐ Advised of Rights ☐ Waived Rights ☐ In Chambers ☐ Interpreter

☐ Bond \$ 25,000 ☐ Motion for Bond Reduction Denied / Granted

☐ Amended Complaint Filed ☐ Complaint Amended by Interlineation ☐ Reading of Complaint Waived

☐ State / Defense / Mutual Request for Continuance

☐ State / Defense Objection / No Objection to Continuance

☐ Case continued to at am/pm for

☐ Defendant Waives Preliminary Hearing ☒ Hearing Held ☒ Commitment Signed

☒ Case Bound Over to Judge Moody on 10/2/12 at 1:30 am/pm

☐ Case Dismissed after Preliminary Hearing / On State's Motion ☐ Release Defendant, This Case Only

ADA COUNTY COURTHOUSE, 200 W. FRONT ST., BOISE, ID 83702

You must appear as scheduled above. Failure to do so will result in a warrant being issued for your arrest.

DATED 10/2/12

CHRISTOPHER D. RICH, Clerk of the District Court

By: Amery
Deputy Clerk

I hereby certify that copies of this notice were served as follows:

Defendant ☒ Hand Delivered

Defense Attorney ☐ Hand Delivered

Public Defender ☐ Hand Delivered

Prosecutor ☒ Hand Delivered

Signature [Signature]

Clerk [Signature] Date 10/2/12

000031

OCT 03 2012

CHRISTOPHER D. RICH, Clerk
By KATRINA CHRISTENSEN
DEPUTY

ADA COUNTY PUBLIC DEFENDER
Attorney for Defendant

Jonathan Loschi
Deputy Public Defender
200 West Front Street, Suite 1107
Boise, Idaho 83702
Telephone: (208) 287-7400
Facsimile: (208) 287-7409

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff,

vs.

RICHARD GLENN MORRIS,


Defendant.

Case No. CR-FE-2012-0013672

MOTION FOR BOND REDUCTION

COMES NOW the defendant, RICHARD GLENN MORRIS, by and through his attorney, Jonathan Loschi, Ada County Public Defender's Office, and moves this Court for an order reducing bond in the above-entitled matter upon the grounds that the bond is so unreasonably high that the defendant, who is an indigent person without funds, cannot post such a bond, and for the reason that the defendant has thereby been effectively denied his right to bail.

DATED this 3rd day of October 2012.




JONATHAN LOSCHI
Attorney for Defendant

CERTIFICATE OF MAILING

I HEREBY CERTIFY, that on this 3rd day of October 2012, I mailed (served) a true and correct copy of the within instrument to:

Bryce Ellsworth
Ada County Prosecutor's Office
Interdepartmental Mail


Katie Van Vorhis

A.M. FILED P.M. 4
OCT 03 2012
CHRISTOPHER D. RICH, Clerk
By KATRINA CHRISTENSEN
DEPUTY

ADA COUNTY PUBLIC DEFENDER
Attorney for Defendant

Jonathan Loschi
Deputy Public Defender
200 West Front Street, Suite 1107
Boise, Idaho 83702
Telephone: (208) 287-7400
Facsimile: (208) 287-7409

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff,

vs.

RICHARD GLENN MORRIS,

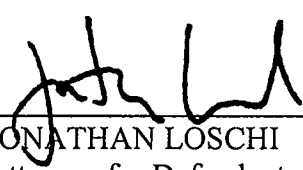
Defendant.

Case No. CR-FE-2012-0013672

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN to all parties that the Court will call on for hearing the Defendant's Motion for Bond Reduction. Said hearing shall take place on **October 12, 2012, at the hour of 1:30 p.m.,** in the courtroom of the above-entitled court, or as soon thereafter as counsel may be heard.

DATED this 3rd day of October 2012.

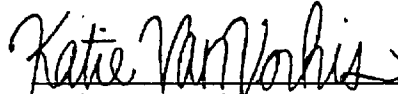


JONATHAN LOSCHI
Attorney for Defendant

CERTIFICATE OF MAILING

I HEREBY CERTIFY, that on this 3rd day of October 2012, I mailed (served) a true and correct copy of the within instrument to:

Bryce Ellsworth
Ada County Prosecutor's Office
Interdepartmental Mail


Katie Van Vorhis

OCT 03 2012

CHRISTOPHER D. RICH, Clerk
By KATRINA CHRISTENSEN
DEPUTY

ADA COUNTY PUBLIC DEFENDER
Attorney for Defendant

Jonathan Loschi
Deputy Public Defender
200 West Front Street, Suite 1107
Boise, Idaho 83702
Telephone: (208) 287-7400
Facsimile: (208) 287-7409

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff,

vs.

RICHARD GLENN MORRIS,

Defendant.

Case No. CR-FE-2012-0013672

**MOTION FOR PRELIMINARY
HEARING TRANSCRIPT**

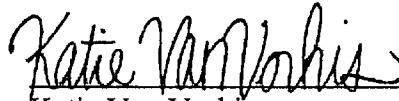
COMES NOW the defendant, RICHARD GLENN MORRIS, by and through his attorney, Jonathan Loschi, Ada County Public Defender's Office, and moves this Court, pursuant to Idaho Criminal Rule 5.2(a), for an order providing typewritten transcripts of the preliminary hearing proceedings, which were held on October 2, 2012, as they are essential and necessary for filing pretrial motions. The defendant, being indigent, also requests that the transcripts be prepared at the cost of Ada County, and as soon as possible.

DATED this 3rd day of October 2012.


JONATHAN LOSCHI
Attorney for Defendant

CERTIFICATE OF MAILING

I HEREBY CERTIFY, that on this 3rd day of October 2012, I mailed (served) a true and correct copy of the within instrument to the **Ada County Transcript Coordinator** via Interdepartmental Mail.


Katie Van Vorhis

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HIS
10/12
1:30

OCT 04 2012

CHRISTOPHER D. RICH, Clerk
By KATRINA CHRISTENSEN
DEPUTY

GREG H. BOWER

Ada County Prosecuting Attorney
200 W. Front Street, Room 3191
Boise, Idaho 83702
Phone: 287-7700
Fax: 287-7709

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff,

vs.

RICHARD GLENN MORRIS,

Defendant.

Case No. CR-FE-2012-0013672

I N F O R M A T I O N

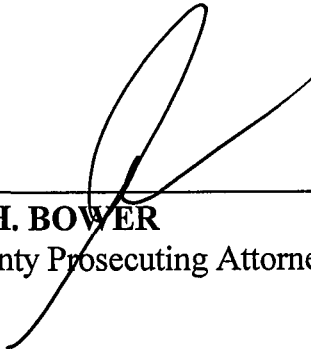
Defendant's 

GREG H. BOWER, Prosecuting Attorney, in and for the County of Ada, State of Idaho, who in the name and by the authority of the State, prosecutes in its behalf, comes now into District Court of the County of Ada, and states that RICHARD GLENN MORRIS is accused by this Information of the crime(s) of: POSSESSION OF A CONTROLLED SUBSTANCE WITH THE INTENT TO DELIVER, FELONY, I.C. §37-2732(a), 18-204 which crime(s) was/were committed as follows:

That the Defendant, RICHARD GLENN MORRIS, on or about the 1st day of August, 2012, in the County of Ada, State of Idaho, did, along with another, unlawfully

possess a controlled substance, to-wit: Marijuana, a Schedule I non-narcotic controlled substance with the intent to deliver the aforementioned controlled substance.

All of which is contrary to the form, force and effect of the statute in such case and against the peace and dignity of the State of Idaho.



GREG H. BOWER
Ada County Prosecuting Attorney

Ada County Mugshot - Prosecutor's Office



User: PRCURTKI

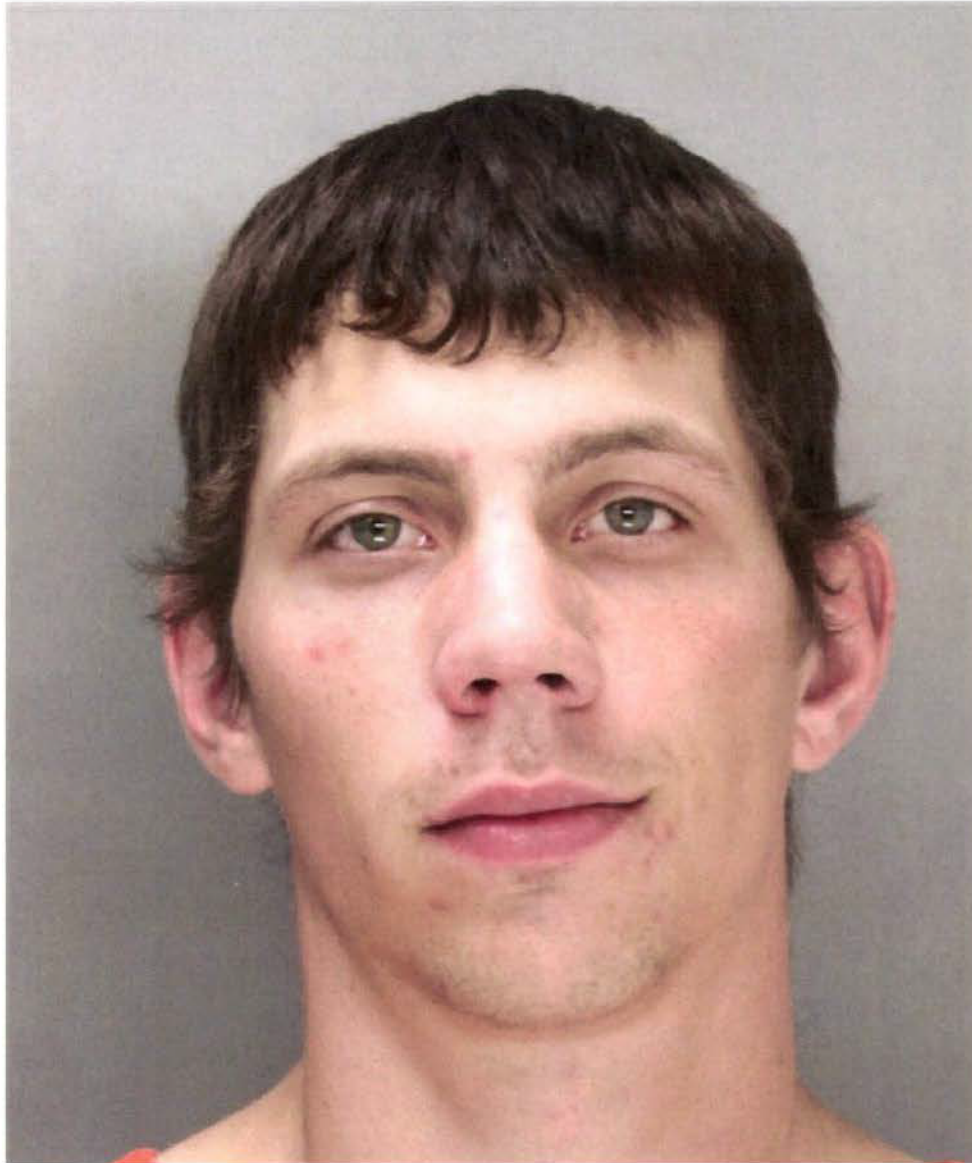


Photo Taken: 2012-08-20 12:56:00

Name: MORRIS, RICHARD GLENN

Case #: CR-FE-2012-0012802

LE Number: 1034069

Height: 605

Weight: 180

Drivers License Number:

Drivers License State:

Sex: M Race: W Eye Color: GRN Hair Color: BRO Facial Hair:

Marks: ARM, RIGHT UPPER

Scars:

Tattoos:

000040

NO. _____ FILED
A.M. 11:00 P.M. _____

OCT 11 2012

CHRISTOPHER D. RICH, Clerk
By INGA JOHNSON
DEPUTY

ADA COUNTY PUBLIC DEFENDER
Attorney for Defendant

Jonathan Loschi
Deputy Public Defender
200 West Front Street, Suite 1107
Boise, Idaho 83702
Telephone: (208) 287-7400
Facsimile: (208) 287-7409

RECEIVED
OCT 03 2012
Ada County Clerk

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff,

vs.

RICHARD GLENN MORRIS,

Defendant.

Case No. CR-FE-2012-0013672

ORDER FOR PRELIMINARY
HEARING TRANSCRIPT

For good cause appearing, this Court hereby grants the Defendant's Motion for Preliminary Hearing Transcript. Pursuant to Idaho Criminal Rule 5.2(a), a typewritten transcript of the preliminary hearing held October 2, 2012, shall be prepared at the expense of Ada County, and as soon as possible.

SO ORDERED AND DATED this 10th day of October 2012.

Melissa Moody
MELISSA MOODY
District Judge

<u>Time</u>	<u>Speaker</u>	<u>Note</u>
<u>1:36:03 PM</u>		
<u>1:36:22 PM</u>	Case Called	State v. Richard Morris FE-12-13672** C AR-Bond Red
<u>1:36:26 PM</u>	States Attorney	Dan Dinger
<u>1:36:28 PM</u>	Defense Attorney	Jon Loschi
<u>1:36:54 PM</u>		Advised of Rights
<u>1:37:20 PM</u>		Defense Waives Reading
<u>1:37:28 PM</u>		Advised of Charges/Penalties
<u>1:39:04 PM</u>	Defense Attorney	NG Plea Enters
<u>1:39:14 PM</u>		2 Trial days
<u>1:39:16 PM</u>		3/11/13 @ 8:30 am for Trial
<u>1:39:29 PM</u>		3/01/13 @ 11:00 am for PTC
<u>1:39:49 PM</u>		Reserves Motion to Argue Bond at a Later Date
<u>1:39:59 PM</u>		End of Case
<u>1:39:59 PM</u>		

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11:00

NO. _____ FILED _____
A.M. _____ P.M. 3

OCT 12 2012

CHRISTOPHER D. RICH, Clerk
By RAE ANN NIXON
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,)	
)	
Plaintiff,)	
)	
vs.	)	Case No. CRFE-2012- 0013672
)	
RICHARD G. MORRIS,	)	NOTICE OF PREPARATION
	)	OF PRELIMINARY HEARING
Defendant,	)	TRANSCRIPT
_____)	

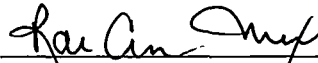
An Order for transcript was filed in the above-entitled matter on October 11, 2012, and a copy of said Order was received by the Transcription Department on October 12, 2012. I certify the estimated cost of preparation of the transcript to be:

Type of Hearing: Preliminary Hearing
Date of Hearing: October 2, 2012 Judge: John Hawley, Jr.
60 Pages x \$3.25 = \$195.00

In this case, the Ada County Public Defender's Office has agreed to pay for the cost of the transcript fee upon completion of the transcript.

The Transcription Department will prepare the transcript and file it with the Clerk of the District Court within thirty (30) days (or expedited days) from the date of this notice. The transcriber may make application to the District Judge for an extension of time in which to prepare the transcript.

Date: October 12, 2012



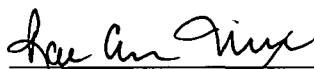
Rae Ann Nixon
Transcript Coordinator

ll

CERTIFICATE OF MAILING

I certify that on October 12, 2012, a true and correct copy of the Notice of Preparation of Transcript was forwarded to Defendant's attorney of record, by first class mail, at:

Ada Co. Public Defender
200 W. Front St. Ste. 1107
Boise ID 83702
JONATHAN D. LOSCHI



Rae Ann Nixon
Transcript Coordinator

FILED
AM. 10:05 P.M.
Tuesday, October 16, 2012
CHRISTOPHER D. RICH, CLERK OF THE COURT
BY: CINDY HO
DEPUTY CLERK

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff,

vs.

RICHARD GLENN MORRIS,
Defendant.

Case No. CR-FE-2012-0013672

NOTICE OF JURY TRIAL AND PRE-TRIAL
CONFERENCE AND LIST OF ALTERNATE
JUDGES

On Friday, October 12, 2012, the defendant entered a plea of not guilty and requested a jury trial.

PRETRIAL CONFERENCE IS SET FOR: Friday, March 01, 2013 @ 11:00 AM

JURY TRIAL IS SET FOR: Monday, March 11, 2013 @ 08:30 AM

The Defendant **must be present** at **both** of these hearings.

Notice is hereby given, pursuant to I.C.R. 25(a)(6) that an alternate judge may be assigned to preside over the trial of this case. The following is a list of potential alternate judges:

Hon. G. D. Carey
Hon. Gregory M. Culet
Hon. Dennis Goff
Hon. Daniel C. Hurlbutt, Jr.
Hon. James Judd
Hon. Duff McKee
Hon. Michael McLaughlin
Hon. James C. Morfitt

Justice Gerald Schroeder
Hon. Kathryn A. Sticklen
Justice Linda Copple Trout
Hon. Darla Williamson
Hon. W. H. Woodland

All Sitting Fourth District Judges

Unless a party has previously exercised their right to disqualification without cause under Rule 25(a)(1), each party shall have the right to file one (1) motion for disqualification without cause as to any alternate judge not later than fourteen (14) days after service of this written notice listing the alternate judge.

All motions pursuant to I.C.R. 12 must be filed within the time-limits set forth in the rule itself.

If a party intends to introduce pursuant to I.R.E. 404, 608 or 609, that party must disclose such evidence to opposing counsel on or before the pre-trial conference.

Failure to comply with this order will subject a party or the party's attorney to sanctions including, but not limited to, costs for subpoenas, reasonable attorney fees, exclusion of witnesses and jury costs.

Dated this 16th day of October, 2012.



MELISSA MOODY
District Judge

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 16th day of October, 2012., I caused a true and correct copy of the above and foregoing instrument to be mailed, postage prepaid, or hand-delivered, to:

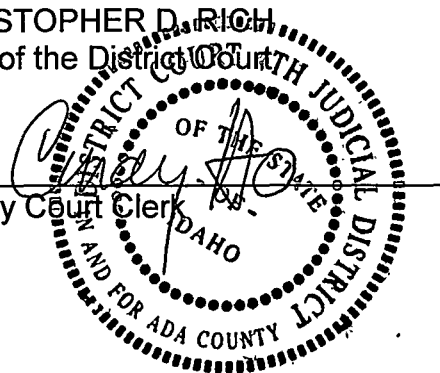
DANIEL R. DINGER
INTERDEPARTMENTAL MAIL

JONATHAN D LOSCHI
ADA COUNTY PUBLIC DEFENDER
200 W FRONT ST RM 1107
BOISE ID 83702

CHRISTOPHER D. RICH
Clerk of the District Court

By: _____

Deputy Court Clerk



NO. _____
A.M. _____ P.M. 213

NOV 02 2012

CHRISTOPHER D. RICH, Clerk
By MAURA OLSON
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

Daniel R. Dinger
Deputy Prosecuting Attorney
200 W. Front Street, Room 3191
Boise, Idaho 83702
Telephone: (208) 287-7700

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,)

Plaintiff,)

vs.)

RICHARD GLENN MORRIS,)

Defendant.)


Case No. CR-FE-2012-0013672

**DISCOVERY
RESPONSE TO COURT**

COMES NOW, Daniel R. Dinger, Deputy Prosecuting Attorney, in and for the County of Ada, State of Idaho, and informs the Court that the State has complied with the Defendant's Request for Discovery.

RESPECTFULLY SUBMITTED this 1st day of November 2012.

GREG H. BOWER
Ada County Prosecuting Attorney


Daniel R. Dinger
Deputy Prosecuting Attorney

NO. _____ FILED 213
A.M. _____ P.M. _____

NOV 02 2012

CHRISTOPHER D. RICH, Clerk
By MAURA OLSON
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

Daniel R. Dinger
Deputy Prosecuting Attorney
200 W. Front Street, Room 366
Boise, Id. 83702
Telephone: (208) 287-7700

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,)

Plaintiff,)

vs.)

RICHARD GLENN MORRIS ,)

Defendant.)

Case No. CR-FE-2012-0013672

REQUEST FOR DISCOVERY

TO THE ABOVE NAMED DEFENDANT:

PLEASE TAKE NOTICE that the undersigned, pursuant to Rule 16 of the Idaho Criminal Rules, requests Discovery and inspection of the following:

(1) Documents and Tangible Objects:

Request is hereby made by the prosecution to inspect and copy or photograph books, papers, documents, photographs, tangible objects or copies or portions thereof, which are within the possession, custody or control of the defendant, and which the defendant intends to introduce in evidence at trial.

REQUEST FOR DISCOVERY (MORRIS), Page 1

000049

(2) Reports of Examinations and Tests:

The prosecution hereby requests the defendant to permit the State to inspect and copy or photograph any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with this case, or copies thereof, within the possession or control of the defendant, which the defendant intends to introduce in evidence at the trial, or which were prepared by a witness whom the defendant intends to call at the trial when the results or reports relate to testimony of the witness.

(3) Defense Witnesses:

The prosecution requests the defendant to furnish the State with a list of names and addresses of witnesses the defendant intends to call at trial.

(4) Expert Witnesses:

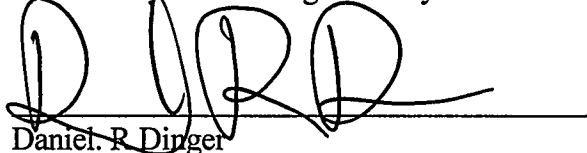
The prosecution requests the defendant to provide a written summary or report of any testimony that the defense intends to introduce pursuant to Idaho Criminal Rule 16(c)(4), including the facts and data supporting the opinion and the witness's qualifications.

(5) Pursuant to Idaho Code Section 19-519, the State hereby requests that the defendant state in writing within ten (10) days any specific place or places at which the defendant claims to have been at the time of the alleged offense and the names and addresses of the witnesses upon whom he intends to rely to establish such alibi.

DATED this 15th day of November 2012.

GREG H. BOWER

Ada County Prosecuting Attorney

A handwritten signature in black ink, appearing to read 'D. R. Dinger', is written over a horizontal line.

Daniel R Dinger

Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of November 2012, I caused to be served, a true and correct copy of the foregoing Request for Discovery upon the individual(s) named below in the manner noted:

Jonathan Loschi, Ada County Public Defender: 200 W. Front Street Suite 1107, Boise ID 83702

- ☐ By depositing copies of the same in the United States mail, postage prepaid, first class.
- ☒ By depositing copies of the same in the Interdepartmental Mail.
- ☐ By hand delivering copies of the same to defense counsel.
- ☐ By informing the office of said individual(s) that said copies were available for pickup at the Office of the Ada County Prosecutor.
- ☐ By faxing copies of the same to said attorney(s) at the facsimile number: _____



Legal Assistant

122
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NO. 11
A.M. FILED P.M.

NOV 06 2012

CHRISTOPHER D. RICH, Clerk
By KATRINA CHRISTENSEN
DEPUTY

ADA COUNTY PUBLIC DEFENDER
Attorney for Defendant

Jonathan Loschi
Deputy Public Defender
200 West Front Street, Suite 1107
Boise, Idaho 83702
Telephone: (208) 287-7400
Facsimile: (208) 287-7409

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff,

vs.

RICHARD GLENN MORRIS,

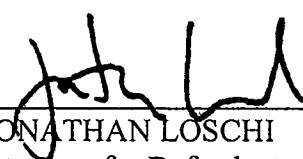
Defendant.

Case No. CR-FE-2012-0013672

MOTION TO ENLARGE TIME

COMES NOW the defendant, RICHARD GLENN MORRIS, by and through his attorney, Jonathan Loschi, Ada County Public Defender's Office, and moves this Court, pursuant to Idaho Criminal Rule 12(d), for an order enlarging time to file pretrial motions in the above-entitled case as the preliminary hearing transcript is still being prepared.

Dated this 6th day of November 2012.

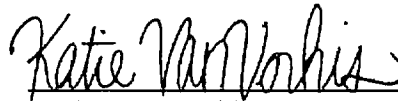


JONATHAN LOSCHI
Attorney for Defendant

CERTIFICATE OF MAILING

I HEREBY CERTIFY, that on this 6th day of November 2012, I mailed (served) a true and correct copy of the within instrument to:

Daniel Dinger
Ada County Prosecutor's Office
Interdepartmental Mail


Katie Van Vorhis

122
PTC
3/1
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ADA COUNTY PUBLIC DEFENDER
Attorney for Defendant
200 West Front Street
Boise, Idaho 83702
Telephone: (208) 287-7400
Facsimile: (208) 287-7409

10. _____
FILED _____
A.M. _____ P.M. _____

NOV 08 2012

CHRISTOPHER D. RICH, Clerk
By KATHINA CHRISTENSEN
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,)	
)	
Plaintiff,)	
	)	Criminal No. CR FE 12 13672
vs.)	
	)	MOTION TO SUPPRESS
RICHARD GLENN MORRIS,)	
)	
Defendant.)	
)	
)	
)	

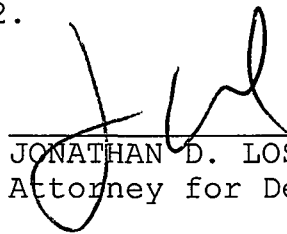
COMES NOW, the above named defendant, RICHARD MORRIS, by and through his attorney of record, the Ada County Public Defender's Office, JONATHAN D. LOSCHI, handling attorney, respectfully moves this court for an Order suppressing all evidence obtained as a result of a traffic stop of a vehicle driving by the Defendant upon the following grounds and for the following reasons:

1. Defendant and the vehicle he was driving were illegally stopped and seized without reasonable suspicion or probable cause to believe that a crime had been committed and that one of the occupants of the vehicle committed that crime, all in violation of Defendant's right under Article I, Section 13 and 17 of the Constitution of the State of Idaho, and under the Fourth and Fourteenth Amendments, Section 1, to the Constitution of the United States of America. Because the seizure of the Defendant was not supported by reasonable articulable suspicion, or probable cause, all evidence derived from the seizure of the

Defendant must be suppressed as fruit of the poisonous tree.

Wong Sun v. United States, 371 U.S. 471, 9 L.Ed. 441, 83 S.Ct 407 (1963). This Motion is supported by the Affidavit of the Defendant and the Defendant's Brief in Support of the Motion to Suppress which are filed simultaneously herewith.

Dated this 8 day of ~~October~~ ^{March}, 2012.



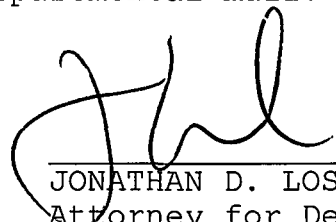
JONATHAN D. LOSCHI
Attorney for Defendant

CERTIFICATE OF MAILING

I HEREBY CERTIFY, that on this 8 day of ~~October~~ ^{March}, 2012, I mailed a true and correct copy of the foregoing to the:

Ada County Prosecutor

By depositing the same in interdepartmental mail.



JONATHAN D. LOSCHI
Attorney for Defendant

ADA COUNTY PUBLIC DEFENDER
Attorney for Defendant
200 West Front Street
Boise, Idaho 83702
Telephone: (208) 287-7400
Facsimile: (208) 287-7409

NOV 08 2012

CHRISTOPHER D. RICH, Clerk
By KATRINA CHRISTENSEN
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,)	
)	
Plaintiff,)	
	)	Criminal No. CR FE 12 13672
vs.)	
	)	BRIEF IN SUPPORT OF
RICHARD GLENN MORRIS,	)	MOTION TO SUPPRESS
)	
Defendant.)	
)	
)	

COMES NOW, the above named defendant, RICHARD MORRIS, by and through his attorney of record, the Ada County Public Defender's Office, JONATHAN D. LOSCHI, handling attorney, and submits this Brief in Support of Motion to Suppress.

FACTS

On August 1, 2012, at approximately 0137 hours, the vehicle the Defendant was driving was pulled over by Boise City police officer James Cromwell. Officer Cromwell filed a report indicating that the sole reason he had stopped the Defendant was because he observed his vehicle's right two wheels straddling the fog line. The officer then initiated a traffic stop at Overland and Palouse in Boise, Idaho, and made contact with the Defendant. As a result of the stop, incriminating evidence was gathered from the vehicle, including approximately 232 grams of marijuana. The Defendant maintains he was not straddling the fog line and that

even if the officer believed he was straddling the fog line such an observation would not allow him to legally stop the Defendant.

ARGUMENT

A traffic stop by a police officer constitutes a seizure of the vehicle's occupants that implicates the Fourth Amendment's prohibition against unreasonable searches and seizures, applied to the states by the Fourteenth Amendment. Delaware v. Prouse, 44 US 648, 59 L.Ed 660, 99 S.Ct. 1391 (1979); State v. Atkinson, 128 Idaho 559, 916 P.3d 1284 (Ct.App.1996). The stop must be supported by a reasonable and articulable suspicion that the vehicle is being driven contrary to traffic laws or that either the vehicle or an occupant thereof is subject to detention in connection with a violation of other laws. United States v. Cortez, 449 US 411, 66 L.Ed.2d 621, 101 S.Ct. 690 (1981); State v. Naccarato, 126 Idaho 10, 878 P.2d 184 (Ct.App.1994). The reasonableness of the suspicion must be evaluated upon the totality of the circumstances at the time of the stop. Naccarato, at 12; State v. Emory, 119 Idaho 661, 809 P.2d 522 (Ct.App.1991). In the present case, the only justification set forth for the traffic stop in the officer's report was that the Defendant's vehicles' right two tires were straddling the white fog line. It is presumed that the officer believed this was a violation of Idaho Code Section 49-637, which states that "A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from that lane until the driver has first ascertained that the movement can be made with safety..."

Defendant contends that the stop in this case was not supported by reasonable suspicion in that he did not straddle the fog line and that even if the officer believed he had done so, such action falls within a broad range of normal driving behaviors and as such it does not give rise to the reasonable suspicion necessary to stop the defendant.

I. Officer Cromwell did not have reasonable suspicion to conduct an investigatory stop because the Defendant's driving conduct fell within the broad range of normal driving behaviors.

a. **The Emory Standard**

The Idaho Court of Appeals has long held that conduct falling within the broad range of normal driving behavior does not give rise to reasonable suspicion. State v. Emory, 119 Idaho 661, 809 P.2d 522 (Ct.App.1991). In Emory, a law enforcement officer was positioned behind Defendant's vehicle at an intersection waiting for a red light to change. The Court recounted the officer's observation:

When the light turned green, Emory's vehicle failed to move for five to six seconds. The officer followed Emory's vehicle, which proceeded correctly through another green light. On the next block of Thirteenth Street, the available road space became narrower due to a long line of parked vehicles. The officer observed Emory driving straight but very close to the parked vehicles.

Id. at 664.

The Court reversed the District Court, holding that "the officer lacked objective facts from which to infer that Emory was engaged in criminal activity. The evidence adduced by the officer could just as easily be explained as conduct falling within the broad range of what can be described as normal driving behavior." Id.

b. **Emory Progeny**

In State v. Atkinson, 128 Idaho 559, 916 P.2d 128 (Ct.App.1996), the Court of Appeals considered whether an investigatory stop was justified by reasonable suspicion where an officer saw Atkinson's vehicle twice in two blocks of traffic veer to the left and touch or cross over the center line. Id. at 560. The officer further observed that after the second such movement to the left, the vehicle swerved back across its lane of

travel and touched the fog line on the extreme right side of the traffic lane. This driving occurred at about 1145pm on a Friday night. Id. In holding there was reasonable suspicion that the driver was intoxicated, the Court noted that "[a]lthough Atkinson's vehicle never entirely left its lane of travel, this weaving pattern, with the vehicle three times touching the lines on the edges of the lane, was not within the normal range of normal driving behavior and was an objective indication that the driver was impaired." Id. at 561.

In State v. Flowers, 131 Idaho 205, 953 P.2d 645 (Ct.App.1998), the Idaho Court of Appeals affirmed the denial of Defendant's motion to suppress. In that case, the officer's attention was drawn to the defendant's vehicle because it was going approximately 45mph, 10mph under the allowed speed limit. The officer also testified that he observed Defendant "hugging the fog line," explaining that the officer could not see any road between Flowers' tire and the line, but that Flowers' tire was not on the line. Id. at 206. The officer then followed Defendant and noticed the vehicle weaving within its lane of traffic. The officer observed the vehicle cross the fog line by a tire width once and watched the vehicle contact the center line of the road once or twice. Id. at 206, 207. The Court held that any one factor observed by the officer "may not have given rise to a reasonable suspicion standard, [but] all of them taken together do so." Id. at 209. The Court held that "this weaving pattern, with the vehicle three times touching the lines on the edge of the lane, was not within the range of normal driving behavior and was an objective indication that the driver was impaired," and therefore gave rise to reasonable suspicion. Id.

In State v. Benefiel, 131 Idaho 226, 953 P.2d 976 (1998), an officer noticed defendant's vehicle cross the center line and the fog line of the road several times. In that case, the Idaho Supreme Court upheld the denial of the magistrate's motion to

suppress. The Court, citing Atkinson, held that the officer had reasonable suspicion to conduct an investigatory stop "based upon his observations of Benefiel's erratic driving." Id. at 229.

The Court of Appeals more recently discussed lane swerving and fog line encroachment as a basis for reasonable suspicion in State v. Slater, 136 Idaho 293, 32 P.3d 685 (Ct.App.2001). In that case, the District Court had denied the defendant's motion to suppress, noting "that a vehicle driving over the fog line by four inches and varying in speed between 10 and 35 miles per hour under the speed limit provided the basis for reasonable suspicion that the driver of the vehicle was impaired." Id. at 297. On appeal, the court affirmed the ruling, holding that "Slater's erratic speed and crossing the fog line...[gave rise to reasonable suspicion]...that Slater might also be driving under the influence of alcohol and or drugs, or was otherwise impaired." Id. at 298.

c. Other States

Other states have addressed stops initiated due to a vehicle's crossing over the fog line. The 9th Circuit addressed such a stop in US v. Delgado-Hernandez, 283 Fed.Appx. 493, 2008 WL 2485429 (C.A.9(Nev.)). In that case an officer observed the left front and rear wheels of the defendants vehicle cross over the fog line by approximately 12 to 14 inches. After a few seconds, the vehicle moved completely back into its lane. Based on this observation, the officer initiated a traffic stop. The Nevada statute in question was similar to Idaho's statute. The Nevada statute required that a vehicle "[b]e driven as nearly as practicable entirely within a single lane". Id. at 495.

The 9th Circuit framed the issue as one of whether the defendant violated the applicable statute by "momentarily crossing the fog line". Id. at 496. The defendant argued that a single instance of driving over the fog line does not violate the statute, and relied on several other states' holdings in support. See United States v. Colin, 314 F.3d 439 (9th.Cir.2002) (holding

that driver does not violate similarly worded California vehicle code section when touching fog line for approximately ten seconds); Rowe v. State, 363 Md. 424, 769 A.2d 879 (2001) ("momentary crossing of the edge line did not amount to unsafe lane change or unsafe entry onto the roadway" in violation of similar Maryland statute); see also United States v. Freeman, 209 F.3d 464 (6th Cir.2000) (finding no probable cause based on single incident of a large motor home crossing the fog line for a few feet). The state cited to cases from Nevada and several other states that they maintained held that a single, brief instance of crossing the fog line violated the Nevada statute and other similarly worded statutes.

The 9th Circuit in Delgado-Hernandez held that the defendant did not violate the Nevada statute by crossing over the fog line once. Id. at 498. The court specifically stated that it was "parting ways" with those courts that have held a driver violates such a statute by momentarily leaving his lane of travel—even under optimal driving conditions. Id. The court stated that the plain language of the statute "contemplates circumstances under which a driver may, with or without reason, momentarily leave his lane of travel without violating the statute". Id. Otherwise the "as nearly as practicable" language is mere surplusage if a driver violates the statute whenever, absent a legal lane change, he fails to remain in a single lane on a multi-lane road. Id. The court stated that the Nevada statute required nothing more than a driver remain in a single lane to the degree that it "is reasonably capable of being accomplished or feasible". Id.

II. The Defendant's driving conduct was within the normal range of driving behaviors and is distinguishable from Atkinson, Flowers, Benefiel, and Slater.

The duty of a driver in Idaho is to operate a vehicle "as nearly as practicable" within a single lane. I.C. 49-637. In interpreting statutory language, all the words of the statute must be given effect if possible, and the statute must be

construed as a whole. In re Permit No 36-7200, 121 Idaho 819, 828 P.2d 848 (1992). In determining its ordinary meaning "effect must be given to all the words of the statute if possible so none will be void, superfluous, or redundant". State v. Mercer, 143 Idaho 108, 138 P.3d 308 (2006). In Idaho, like Nevada, there are instances in which a vehicle may travel outside its lane of travel and not be in violation of the statute.

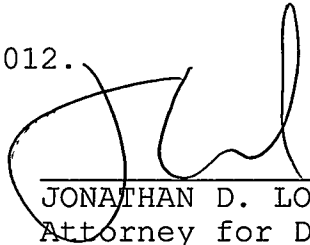
The defendant expects the evidence to show that he did not "straddle the fog line", and that even if the officer had believed he had done so, the behavior was within the normal range of driving behaviors and not in violation of Idaho Code Section 49-637. It should be noted that in Benefiel, Slater, and Flowers the driver crossed the fog line at least one time and it was never argued in any of those cases that crossing the fog line formed the basis for a traffic stop based on a violation of Idaho Code Section 49-637. There is nothing in the officer's report that suggests the Defendant crossed the fog line more than once, was speeding, driving too slowly or too fast, or driving erratic in any manner. The Defendant contends that his driving is distinguishable from the driving in Atkinson, Flowers, Benefiel, and Slater and as such the officer did not have reasonable articulable suspicion or probable cause to conduct an investigatory stop.

CONCLUSION

Based on the foregoing, the Defendant respectfully requests that the court grant his Motion to Suppress.

AND IT IS MOVED.

Dated this 8 day of November, 2012.



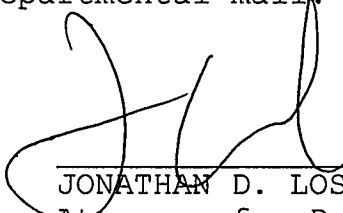
JONATHAN D. LOSCHI
Attorney for Defendant

CERTIFICATE OF MAILING

I HEREBY CERTIFY, that on this 8 day of November, 2012, I mailed a true and correct copy of the foregoing to the:

Ada County Prosecutor

By depositing the same in interdepartmental mail.



JONATHAN D. LOSCHI
Attorney for Defendant

NOV 08 2012

CHRISTOPHER D. RICH, Clerk
By KATRINA CHRISTENSEN
DEPUTY

ADA COUNTY PUBLIC DEFENDER
Attorney for Defendant
200 West Front Street
Boise, Idaho 83702
Telephone: (208) 287-7400
Facsimile: (208) 287-7409

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

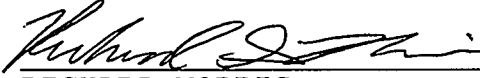
STATE OF IDAHO,)	
)	
Plaintiff,)	
	)	Criminal Nos. CR FE 12 13672
)	
vs.)	
	)	AFFIDAVIT OF RICHARD MORRIS
	)	IN SUPPORT OF MOTION TO
	)	SUPPRESS
RICHARD GLENN MORRIS,)	
)	
Defendant.)	
)	
)	
)	
)	
STATE OF IDAHO)	
	) ss.	
County of Ada)	

I, RICHARD MORRIS, after first being duly sworn do attest to the following:

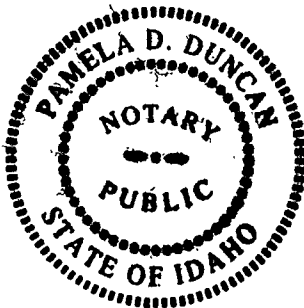
1. That I am the defendant in the above referenced matter;
2. That on August 1, 2012, in Boise, Idaho, the vehicle I was driving was stopped by Boise City police officer Cromwell;
3. The officer stated that he pulled me over for crossing the fog line;
4. The officer searched the vehicle I was driving following the stop;
5. Marijuana was discovered as a result of that search;
6. That at no time was I served with an arrest warrant;
7. That at no time was I served with a search warrant.

FURTHER YOUR AFFIANT SAYITH NOT.

DATED this 8th day of November, 2012.


RICHARD MORRIS
Defendant/Affiant

SUBSCRIBED and SWORN to before me, a Notary Public, in and for the State of Idaho, County of Ada, this 8th day of November, 2012.



Pamela D. Duncan
Notary Public
Residing at Ada County, Idaho
My Commission Expires 9-17-2014

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MS
12/10
4p

NO. 11:50 FILED
A.M. 11:50 P.M.

NOV 14 2012

CHRISTOPHER D. RICH, Clerk
By ELAINE TONG
DEPUTY

ADA COUNTY PUBLIC DEFENDER
Attorney for Defendant

Jonathan Loschi
Deputy Public Defender
200 West Front Street, Suite 1107
Boise, Idaho 83702
Telephone: (208) 287-7400
Facsimile: (208) 287-7409

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff,

vs.

RICHARD GLENN MORRIS,

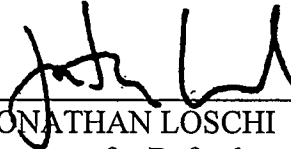
Defendant.

Case No. CR-FE-2012-0013672

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN to all parties that the Court will call on for hearing the Defendant's Motion to Suppress. Said hearing shall take place on **December 10, 2012, at the hour of 4:00 p.m.**, in the courtroom of the above-entitled court, or as soon thereafter as counsel may be heard.

Dated this 14th day of November 2012.




JONATHAN LOSCHI
Attorney for Defendant

CERTIFICATE OF MAILING

I HEREBY CERTIFY, that on this 14th day of November 2012, I mailed (served) a true and correct copy of the within instrument to:

Daniel Dinger
Ada County Prosecutor's Office
Interdepartmental Mail


Katie Van Vorhis

NO. _____ FILED 3:49
A.M. _____ P.M. _____

NOV 15 2012

CHRISTOPHER D. RICH, Clerk
By CINDY HO
DEPUTY

ADA COUNTY PUBLIC DEFENDER
Attorney for Defendant

Jonathan Loschi
Deputy Public Defender
200 West Front Street, Suite 1107
Boise, Idaho 83702
Telephone: (208) 287-7400
Facsimile: (208) 287-7409

RECEIVED
NOV 06 2012
Ada County Clerk

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff,

vs.

RICHARD GLENN MORRIS,


Defendant.

Case No. CR-FE-2012-0013672

ORDER ENLARGING TIME

Pursuant to the authority of Idaho Criminal Rule 12(d), this Court hereby grants the Defendant's Motion to Enlarge Time. The Defendant shall receive an additional 30 days from the filing of the preliminary hearing transcript in which to file pretrial motions.

SO ORDERED AND DATED this 14th day of November 2012.


MELISSA MOODY
District Judge

ORDER ENLARGING TIME

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NO. _____ FILED _____
A.M. _____ P.M. _____

NOV 20 2012

CHRISTOPHER D. RICH, Clerk
By KATRINA CHRISTENSEN
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

Daniel R. Dinger
Deputy Prosecuting Attorney
200 W. Front Street
Boise, Idaho 83702-5954
Telephone: (208) 287-7700

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,)	
)	
Plaintiff,	)	Case No. CR-FE-2012-0013672
)	
vs.	)	STATE'S RESPONSE TO
	)	DEFENDANT'S MOTION TO
RICHARD GLENN MORRIS,	)	SUPPRESS AND REQUEST THAT
	)	MOTION TO SUPPRESS BE
Defendant.	)	DENIED WITHOUT AN
	)	EVIDENTIARY HEARING

COMES NOW, Daniel R. Dinger, Deputy Prosecuting Attorney for the County of Ada, State of Idaho, and submits the following response to Defendant Morris' Motion to Suppress and Brief in Support of Motion to Suppress. The State requests that Defendant's motion be denied, and that it be denied without an evidentiary hearing as the sole issue for this Court to decide is a legal question, and therefore no additional presentation of factual evidence is necessary. Specifically, the sole issue for this Court to decide is whether Defendant's act of crossing the fog line while driving gave law enforcement a lawful reason to stop Defendant's vehicle. The

preliminary hearing transcript makes it clear that the officer saw Defendant cross the fog line in violation of I.C. §49-637, and since the sole issue presented in the Motion to Suppress is whether that act of crossing the fog line provided the officer with a lawful reason to stop Defendant, there is no factual issue for the Court to consider at an evidentiary hearing.

I. FACTS

Defendant Morris was contacted by law enforcement after the vehicle he was driving was stopped for a traffic infraction. Specifically, he was stopped because his right-side tires crossed over the fog line, which is a violation of I.C. §49-637. The facts and circumstances of the stop were testified to at a preliminary hearing. In that hearing and during direct examination, Officer Cromwell from the Boise Police Department testified about the traffic violation as follows:

Q: At approximately 1:37 did you pull over a vehicle?

A: Yes, I did.

Q: What for?

A: For suspected DUI. His right two tires were over the fog line.

Preliminary Hearing Transcript at page 7 line 13 – page 7 line 18. During cross-examination Officer Cromwell provided additional details about the basis for the traffic stop.

Q: And you stated at some point the right wheels were straddling the white fog line?

A: Yeah, both right wheels were straddling the white fog line.

Q: And, approximately, how far behind you—or behind this vehicle were you when you saw that?

A: Probably about three or four car lengths.

Q: And, approximately, where along Latah did that happen?

A: It happened—it would have been right around Cassia, just past Cassia.

Q: So just past Cassia you saw this vehicle's right tires cross the fog line?

A: Yes.

Q: How long were they over the fog line?

A: A few seconds.

Q: Was this the only driving violation you saw?

A: Yes.

Preliminary Hearing Transcript at page 12 line 21 – page 13 line 16. During the subsequent contact with Defendant Morris and his co-defendant passenger, law enforcement discovered that he and his co-defendant had a significant amount of marijuana. Following his arrest and post-*Miranda*, Defendant admitted that just prior to being stopped he left a residence where he had picked up one-half pound of marijuana; that he had been selling marijuana; and that the one-half pound was purchased for resale. Defendant's girlfriend and co-defendant, Crystal Phillips, essentially corroborated Defendant's statements.

Defendant is not alleging any violations of his rights other than the traffic stop in question. In other words, the basis for his Motion to Suppress is limited solely to the lawfulness of the initial stop of his car, and Idaho case law supports the lawfulness of the stop.

II. LEGAL ARGUMENT

Defendant's claim that his stop was unlawful is refuted by the Idaho Court of Appeals' decision in *State v. Slater*, 136 Idaho 293 (Id. Ct. App. 2001), a case which Defendant cites in his

brief, but from which he omits a significant and relevant section of the opinion. Specifically, Defendant's citation to *Slater* completely leaves out the most important and, in terms of the present case, most applicable portion of that opinion.

In *Slater* the defendant/appellant was seen crossing the fog line and then making variations in his speed while driving well-under the speed limit. In his brief Defendant suggests that the stop in *Slater* was upheld solely because of that combination of crossing over the fog line and the changes in speed. While that combination of factors provided one basis for the stop, the fact that the driver crossed the fog line, by itself, provided another independent basis for the stop—an independent basis that the Idaho Court of Appeals determined was sufficient to make the stop lawful. Specifically, the *Slater* Court wrote:

Idaho Code § 49-630(1) requires that a vehicle be driven on the right half of the roadway, except in certain circumstances that are not applicable in this case. The “roadway” means that portion of a highway that is “improved, designed or ordinarily used for vehicular travel.” I.C. § 49-119(18). It does not include “sidewalks, shoulders, berms [or] rights-of-way.” **Accordingly, when Officer Burns observed Slater's tires cross the fog line, albeit fleetingly, Burns now possessed the requisite reasonable suspicion that Slater had violated I.C. § 49-630 by driving on the shoulder of the highway than on the “roadway.”** Furthermore, Officer Burns observed Slater proceed down the highway at varying speeds between 10 and 35 miles per hour under the 75 mile per hour speed limit. Based on Slater's erratic speed and crossing of the fog line, Officer Burns had reasonable suspicion that Slater might **also** be driving under the influence of alcohol and of drugs, I.C. § 18-8004, or was otherwise impaired. Consequently, Slater's motion to suppress based upon alleged unlawfulness of the traffic stop was correctly denied.

Slater, 136 Idaho at 298 (emphasis added and citations omitted). An accurate reading of this portion of the *Slater* opinion is that the officer in *Slater* had two separate and independent bases for stopping the driver. The first independent basis was the crossing of the fog line, even though it was just done “fleetingly.” That act alone, the Court noted, provided reasonable suspicion for

the stop as it was a violation of the cited traffic law. The combination of crossing the fog line and the variations in speed was another separate and independent basis that supported the lawfulness of the stop, as evidenced by the Court's statement that the combination of those things provided "reasonable suspicion that Slater might *also* be driving under the influence." The Court's use of the word "also" makes it clear that the driver possibly being under the influence was an additional reason for the officer to stop him and an additional reason that the stop was lawful. Furthermore, the factual portion of the *Slater* opinion suggests that the officer first saw the driver cross the fog line and that it was not until after the crossing of the fog line that he later saw the variations in speed. Thus where the Court writes that when he saw the car cross the fog line the officer "now possessed the requisite reasonable suspicion that Slater had violated" a valid traffic law, it is clear that this very act alone is enough to justify a stop of a vehicle and that additional violations or driving issues are not required to justify a stop as, at that point in time, the variations in speed had not yet occurred. Based on this precedent, Defendant's act of crossing the fog line in the present case was enough to justify Officer Cromwell's stop of his vehicle and nothing more was needed or required to make the stop lawful.¹

In more general terms, it is also undisputed that a police officer can stop a motorist for a single traffic violation, which makes Officer Cromwell's stop of Defendant for crossing the fog line completely and totally reasonable and lawful as failure to maintain one's lane is a violation of I.C. §49-637. *See Matter of Griffiths*, 113 Idaho 364 (Idaho 1987) (citing *Delaware v. Prouse*,

¹ The court's holding in *Slater* also trumps the Ninth Circuit case of *United States v. Delgado-Hernandez*, 283 Fed. Appx. 493, 2008 WL 2485429 (9th Cir. 2008), which, as Defendant states, held that a momentary crossing of the fog line is not a violation of a Nevada statute. Certainly Idaho courts have the authority to interpret Idaho law, and therefore a decision from an Idaho appellate court on an Idaho-specific issue trumps the Ninth Circuit's reading of a Nevada statute.

440 U.S. 648 (1979) and *Stream v. Heckers*, 519 P.2d 336 (Colo. 1974) for the propositions that “traffic offenses give police probable cause to stop vehicle” and “crossing double yellow line late at night furnished probable cause to stop vehicle”). See also *Whren v. United States*, 517 U.S. 806, 810 (1996) (“As a general matter, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred.”). To suggest, as Defendant does, that more is required and that crossing the fog line alone is not enough to justify a stop goes contrary to this well-settled law.

Additionally, it is not relevant that Officer Cromwell’s stated reason for pulling the Defendant over was for suspected DUI instead of for failing to maintain his lane because an officer’s subjective motives for stopping a person cannot provide a ground to suppress evidence when a stop is objectively justifiable on other grounds. This issue was addressed in *State v. Myers*, 118 Idaho 608 (Id. Ct. App. 1990) and in other applicable case law. *Myers* addressed a defendant/appellant’s claim that an officer’s stop of his vehicle for a simple traffic violation was “a pretext to search for evidence of an unrelated offense.” *Id.* at 610. In rejecting that claim the Idaho Court of Appeals wrote:

The first issue on appeal is whether the officer’s underlying motive is relevant in determining whether an officer is entitled to stop a motorist. . . . This issue is not one of first impression in this state. This Court addressed this question in the factually similar case of *State v. Law* . . . [where] we held that when an officer has an objectively reasonable basis for making an investigative stop, the officer’s subjective motive or actual state of mind is irrelevant. Here, the officer had an objectively reasonable basis for making the stop. **In fact, the officer who stopped Myers had probable cause to make the stop because of the observed traffic infraction.** Consequently, any underlying motive of Detective Tudbury in stopping Myers’ vehicle as a pretext to search for drugs was irrelevant because the stop was justified by an objectively reasonable basis.

Id. (citations omitted and emphasis added). Similarly, in the present case Officer Cromwell's underlying motive in stopping Defendant for a possible DUI is irrelevant because the stop was justified by an objectively reasonable basis—the “observed traffic infraction” of Defendant's failing to maintain his lane in violation of I.C. §49-637, which *Myers* further states is, by itself, a reasonable and lawful basis to make a traffic stop. *See also Devenpeck v. Alford*, 543 U.S. 146, 153 (2004) (“[An officer's] subjective reason for making the arrest need not be the criminal offense as to which the known facts provide probable cause.”); *Whren*, 517 U.S. at 813 (“[T]hese cases foreclose any argument that the constitutional reasonableness of traffic stops depends on the actual motivations of the individual officers involved.”); *Scott v. United States*, 436 U.S. 128, 136 (1978) (“[T]he fact that the officer does not have the state of mind which is hypothecated by the reasons which provide the legal justification for the officer's action does not invalidate the action taken as long as the circumstances, viewed objectively, justify that action.”).

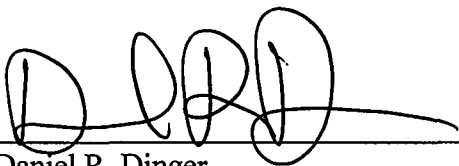
III. CONCLUSION

In *Slater*, the Idaho Court of Appeals held that when the police officer saw the defendant's tires “cross the fog line, albeit fleetingly,” he had reasonable suspicion to stop the defendant/appellant for a violation of applicable traffic laws. Nowhere did the Court state that the commission of a traffic infraction alone does not justify a stop of a vehicle; in fact, the cited case law demonstrates that a single traffic infraction such as that of crossing the fog line can be the basis for a lawful stop of a vehicle, and that when such an infraction occurs it can justify a stop regardless of the officer's subjective thoughts about the basis for the stop. Applying this case law to the present case, when Officer Cromwell saw Defendant cross the fog line for even just a few seconds

he had probable cause to stop Defendant's vehicle. As such—this being Defendant's only basis for seeking suppression—the Motion to Suppress should be summarily denied.

DATED this 20th day of November, 2012.

GREG H. BOWER
Ada County Prosecuting Attorney



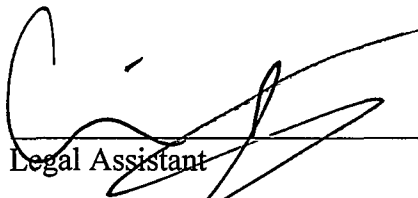
Daniel R. Dinger
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of November 2012, I caused to be served, a true and correct copy of the foregoing STATE'S RESPONSE TO DEFENDANT'S MOTION TO SUPPRESS AND REQUEST THAT MOTION TO SUPPRESS BE DENIED WITHOUT AN EVIDENTIARY HEARING upon the individual(s) named below in the manner noted:

Name and address: Jonathan Loschi, Ada County Public Defender's Office, 200 W. Front Street, Boise, Idaho

- ☒ By depositing copies of the same in the Interdepartmental Mail.
- ☐ By informing the office of said above-referenced Defense Attorney(s) that said copies were available for pickup at the Office of the Ada County Prosecutor.
- ☐ By Hand Delivery



Legal Assistant

STATE'S RESPONSE TO DEFENDANT'S MOTION TO SUPPRESS AND REQUEST THAT MOTION TO SUPPRESS BE DENIED WITHOUT AN EVIDENTIARY HEARING (*State v. Richard Glenn Morris*, CR-FE-2012-0013672) – Page 8 of 9

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FILED 3:59
AM. _____ P.M. _____
Tuesday, December 04, 2012
CHRISTOPHER D. RICH, CLERK OF THE COURT
BY: CINDY HO
DEPUTY CLERK

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,
Plaintiff,

vs.

RICHARD GLENN MORRIS,
Defendant.

Case No. CR-FE-2012-0013672

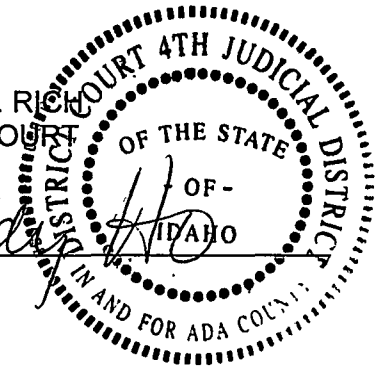
NOTICE OF CONTINUED MOTION
TO SUPPRESS HEARING

The above-entitled case has been rescheduled to set for **Friday, December 14, 2012 at 02:30 PM**, in the Ada County Courthouse at 200 W. Front Street, Boise, Idaho before Judge Melissa Moody.

DATED this 4th day of December, 2012.

CHRISTOPHER D. RICH
CLERK OF THE COURT

by Cindy Ho
Deputy Clerk



CERTIFICATE OF MAILING

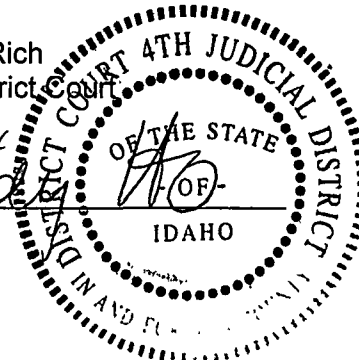
I HEREBY CERTIFY that on this 5th day of December, 2012, I caused a true and correct copy of the above and foregoing instrument to be mailed, postage prepaid, to:

Daniel R. Dinger
Deputy Ada County Prosecutor
INTERDEPARTMENTAL MAIL

Ada County Public Defender
200 W Front St Rm 1107
Boise ID 83702

Christopher D. Rich
Clerk of the District Court

By: Cindy Ho
Deputy Clerk



NOTICE OF HEARING

000077

DEC - 7 2012

ADA COUNTY PUBLIC DEFENDER
Attorneys for Defendant

CHRISTOPHER D. RICH, Clerk
By ELAINE TONG
DEPUTY

JONATHAN D. LOSCHI, ISB #6002
Deputy Public Defender
200 West Front Street, Suite 1107
Boise, Idaho 83702
Telephone: (208) 287-7400
Facsimile: (208) 287-7409

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff,

vs.

RICHARD G. MORRIS,

Defendant.

Case No. CR-FE-2012-0013672

DEFENDANT'S SPECIFIC REQUEST
FOR DISCOVERY

TO: THE STATE OF IDAHO, Plaintiff, and to DANIEL R. DINGER, Ada County
Prosecutor's Office:

PLEASE TAKE NOTICE that undersigned counsel requests discovery and copies of
the following information, evidence, and/or materials pursuant to ICR 16 within fourteen days of
service:

- 1) The written report authored by Officer Markle, as referenced by his
testimony at the preliminary hearing held in this case. (PHTr. 40:17-20,
October 2, 2012).
- 2) Detective Christensen's handwritten notes as referenced by his testimony
at the preliminary hearing held in this case. (PHTr. 48:22-25, October 2,
2012).

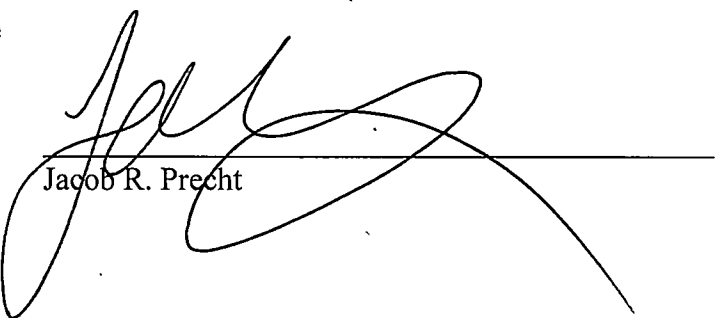
DATED, this 7 day of December 2012.


JONATHAN D. LOSCHI
Attorney for Defendant

CERTIFICATE OF MAILING

I HEREBY CERTIFY, that on this 7 day of December 2012, I mailed (served) a true and correct copy of the within instrument to:

DANIEL R. DINGER
Ada County Prosecutor's Office
Interdepartmental Mail



Jacob R. Precht

122

NO. _____ FILED _____
A.M. _____ P.M. 12/7

DEC 07 2012

CHRISTOPHER D. RICH, Clerk
By AMY LANG
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

Daniel R. Dinger
Deputy Prosecuting Attorney
200 West Front Street, Room 3191
Boise, ID 83702
Telephone: (208) 287-7700

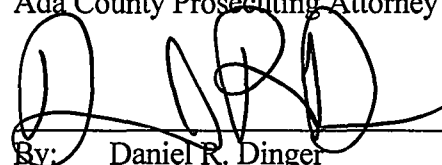
IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,)	
)	
Plaintiff,	)	Case No. CR-FE-2012-0013672
vs.)	
	)	FIRST ADDENDUM TO
RICHARD G. MORRIS,	)	DISCOVERY RESPONSE TO
	)	COURT
Defendant.)	
)	
_____)	

COMES NOW, Daniel R. Dinger, Deputy Prosecuting Attorney in and for Ada County, State of Idaho, and informs the Court that the State has submitted an Addendum to Response to Discovery.

RESPECTFULLY SUBMITTED this 5th day of December 2012.

GREG H. BOWER
Ada County Prosecuting Attorney


By: Daniel R. Dinger
Deputy Prosecuting Attorney

mo

DEC 07 2012

CHRISTOPHER D. RICH, Clerk
By AMY LANG
DEPUTY

122
MO.
12/14
2:30
GREG H. BOWER
Ada County Prosecuting Attorney

Daniel R. Dinger
Deputy Prosecuting Attorney
200 W. Front Street
Boise, Idaho 83702-5954
Telephone: (208) 287-7700

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff,

vs.

RICHARD GLENN MORRIS and
CHRYSTAL ROSE PHILLIPS,

Defendant.

Case Nos. CR-FE-2012-0013672
CR-FE-2012-0012803

**SUPPLEMENTAL RESPONSE TO
DEFENDANTS' MOTIONS TO
SUPPRESS**

COMES NOW, Daniel R. Dinger, Deputy Prosecuting Attorney for the County of Ada, State of Idaho, and submits the following supplement to the State's Response to Defendants Morris and Phillips' Motions to Suppress. In its previous filings, the State provided reasons and grounds that this Court should deny Defendants' Motions to Suppress. In addition to those previously-provided grounds, this Court should deny Defendants' motions for the reason that at the time of the stop in question, Defendant Morris was on felony probation, and as a part of being

on probation, he had waived his Fourth Amendment rights. Therefore he has no grounds to contest the search of his vehicle on the day in question and neither does co-defendant Phillips.

I. FACTS

Defendant Morris is a convicted felon. On June 13, 2011 he pled guilty to Aggravated Battery, and on August 29, 2011 he was sent on a period of retained jurisdiction. After a post-rider hearing, Defendant Morris was granted probation. Specifically, on April 2, 2012, Defendant Morris was placed on probation for a period of ten (10) years.¹ In conjunction with that sentence, on April 3, 2012, Judge Neville signed and issued an Order Suspending Sentence and Order of Probation. *See Attachment #1*. On page 2, lines 6-13 of that Order, Judge Neville included the following term of probation:

That the probationer shall be under the legal custody and control of the Director of Probation and Parole of the State of Idaho and the District Court and subject to the rules of probation as prescribed by the Board of Correction and the District Court, and further the said probationer does hereby agree and consent to the search of his person, automobile, real property, and any other property at any time and at any place by any law enforcement officer, peace officer, or probation officer, and does waive his constitutional right to be free from such searches.

Defendant signed a copy of that order in the presence of his probation officer, thereby agreeing to its terms, including the term waiving his right to be free from such searches. *See Attachment #2*. Finally, as noted in the referenced Order, Defendant agreed to be subject to the rules of probation. One such rule is a waiver of his right to be free from searches. Specifically, he agreed to the following term:

11. Search: The defendant shall consent to the search of his/her person, residence, vehicle, personal property, and other real property or structures owned or leased by the defendant or for which the defendant is the controlling authority

¹ The offense charged in the present case occurred on August 1, 2012, which was after Defendant was placed on probation and while he was under the supervision of the Department of Corrections.

conducted by any agent of the Idaho Dept of Correction or law enforcement officer. The defendant waives his/her Fourth Amendment Rights concerning searches.

See Attachment #3 at ¶ 11. Defendant Morris' acceptance of that term is indicated by his initials next to that term and his signature at the end of the form.

II. LEGAL ARGUMENT

Defendants who are placed on probation often enter into probation agreements that include a consent to warrantless searches. Authority for making a waiver of Fourth Amendment rights a term of probation is found in I.C. §19-2601(4), which authorizes that "[p]lacement on probation shall be under such terms and conditions as the court deems necessary and expedient." Idaho's appellate courts have repeatedly upheld the lawfulness of such agreements and searches performed based on those agreements.

One case upholding a probation agreement of this type and a search based on that agreement is *State v. Gawron*, 112 Idaho 841 (Idaho 1987). In *Gawron*, the defendant/appellant signed a probation agreement almost identical to Judge Neville's Order Suspending Sentence and Order of Probation referenced above, which allowed for the search of the probationer at any time and in any place. The *Gawron* agreement stated:

That probationer does hereby agree and consent to the search of his person, automobile, real property, and any other property at any time and at any place by any law enforcement officer, peace officer, or probation officer, and does waive his constitutional right to be free from such searches.

Id. at 842. On appeal, *Gawron* "contend[ed] that the probation condition which require[d] submission to warrantless searches constitute[d] an unreasonable invasion of his fourth amendment rights." *Id.* at 843. The Idaho Supreme Court, however, disagreed, holding that "such persons conditionally released to societies [such as probationers] have a reduced

expectation of privacy, thereby rendering intrusions by government authorities ‘reasonable’ which otherwise would be unreasonable or invalid under traditional constitutional concepts.” *Id.* And on that basis the court upheld the search of the defendant/appellant’s home by a group of law enforcement and probation officers.² *See also Samson v. California*, 547 U.S. 843 (2006) (upholding a search based on a probation/parole agreement under which appellant agreed to submit to a suspicionless search by a parole or peach officer “at any time” even when search was conducted by a police officer who had no individualized suspicion that parolee was engaging in criminal activity and did not search at the request of a parole officer).

Significantly, Defendant’s waiver of his Fourth Amendment right against warrantless searches impliedly carries with it a right to seize or detain the person to be searched. This proposition is supported by the Idaho Supreme Court’s decision in *State v. Purdam*, 147 Idaho 206 (Idaho 2009). In *Purdam*, the court, addressing the validity of a probation search, held that “[w]hile the Idaho Supreme Court has said that conditions of probation, especially a waiver of a Fourth Amendment right, cannot be implied, an officer must be able to temporarily detain a probationer in order to effectuate this search condition.” *Id.* at 210. The court further found that “Purdam consented to submit to random evidentiary testing and, therefore, he impliedly consented to a limited seizure of his person necessary to effectuate such searches.” The *Purdam* court also cited *People v. Viers*, 1 Cal.App.4th 990, 993-94 (Cal. Ct. App. 1991) for the

² It should also be noted that the *Gawron* opinion specifically rejected the application of a three-prong test governing the search of probationers that was articulated in *State v. Vega*, 110 Idaho 685 (Id. Ct. App. 1986) on the grounds that that test applied only to situations where there was no express written probation agreement instituting a waiver of the probationer’s Fourth Amendment rights. The court wrote: “Since we base our determination in the instant case upon Gawron’s consent to warrantless searches, both Vega and Pinson are inapplicable to the instant case, and we need not discuss the continued validity of the three-prong test enunciated by the Court of Appeals in Vega.” *Gawron*, 112 Idaho at 843. *See also State v. Peters*, 130 Idaho 960 (Id. Ct. App. 1997).

proposition that “[p]ermission to detain is implicit in most Fourth Amendment waivers. . . . Absent a detention the police cannot search a person and [areas] typically listed in Fourth Amendment waiver provisions.” *Id.* Given this authority, Defendant’s probation agreement implicitly granted law enforcement the authority to temporarily seize him to effectuate a search such as that conducted here.

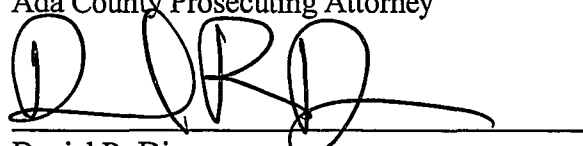
Finally, Defendant Phillips does not have room to complain about her seizure because she was with Defendant at the time that he was lawfully seized and a search conducted. *See State v. Barker*, 136 Idaho 728 (Id. Ct. App. 2002); *State v. Misner*, 135 Idaho 277 (Id. Ct. App. 2000).

III. CONCLUSION

In conclusion, Officer Cromwell’s stop of Defendant was not illegal because he witnessed Defendant cross and straddle the fog line and therefore had probable cause to stop his vehicle. Thereafter, any search of Defendant was legal not only because the officer smelled the odor of marijuana and therefore had authority to extend the stop and call in a drug dog as he did, but also because of Defendant’s Fourth Amendment waiver as detailed above. For these reasons Defendant’s Motion to Suppress should be denied.

DATED this 5th day of December 2012.

GREG H. BOWER
Ada County Prosecuting Attorney



Daniel R. Dinger
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on this 7 day of December 2012 I caused to be served, a true and correct copy of the foregoing Supplemental Response to Defendants' Motions to Suppress upon the individuals named below in the manner noted:

Jonathan Loschi
Ada County Public Defender
200 W. Front Street, Rm. 1107
Boise, ID 83702

- ☒ By hand delivering said document to defense counsel.
☐ By depositing copies of the same in the Interdepartmental Mail.

Layne Davis
Attorney at Law
200 N. 4th Street, Suite 302
Boise, ID 83702

- ☒ By depositing copies of the same in the United States mail, postage prepaid, first class.
☐ By hand delivering said document to defense counsel.



Legal Assistant

State's Attachment #1

APR 05 2012

CHRISTOPHER D. RICH, Clerk
By KATH HOPP
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,

Plaintiff,

vs.

RICHARD GLENN MORRIS,

Defendant.

Case No. CR-FE-2010-0015488

**ORDER SUSPENDING SENTENCE
AND ORDER OF PROBATION**

WHEREAS on the 13th day of June, 2011, the defendant pled guilty in the District Court of the Fourth Judicial District in and for the County of Ada to the crime of: AGGRAVATED BATTERY, FELONY, I.C. §§18-903(a), -907(a), committed on or about the 12th day of September, 2010; and on the 29th day of August, 2011, the defendant was committed to the custody of the State Board of Correction for a period of ten (10) years, consisting of a fixed term of two (2) years followed by an indeterminate term of eight (8) years;

AND WHEREAS The Court retained jurisdiction for 365 days to suspend execution of Judgment pursuant to Section 19-2601(4) of the Idaho Code;

AND WHEREAS the District Court on the 2nd day of April, 2012, having ascertained the desirability of suspending execution of the judgment and placing the defendant on probation for the balance of said sentence;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the defendant be placed on probation, and sentence is hereby suspended for the balance of the ten (10)-year period, upon the following conditions, to-wit:

KH

1 1. That the probation is granted to and accepted by the
2 probationer, subject to all of its terms and conditions, and with
3 the understanding that the Court may, at any time, in case of the
4 violation of the terms of the probation, cause the probationer to
5 be returned to the Court, revoke the probation and order the
6 defendant--returned to the custody of the State--Board of
7 Correction to serve the sentence originally imposed.

8 2. That the probationer shall be under the legal custody
9 and control of the Director of Probation and Parole of the State
10 of Idaho and the District Court and subject to the rules of
11 probation as prescribed by the Board of Correction and the
12 District Court, and further the said probationer does hereby
13 agree and consent to the search of his person, automobile, real
14 property, and any other property at any time and at any place by
15 any law enforcement officer, peace officer, or probation officer,
16 and does waive his constitutional right to be free from such
17 searches.

18 3. Special Conditions, to-wit:

19 a. The defendant shall pay \$27.50 court costs, \$10 POST Fees,
20 \$10.00 ISTARS Fees, \$75 Victims' Compensation Fund, Emergency
21 Surcharge Fee in the amount of \$100.00, and a sum of not more than
22 \$60 per month for probation supervision if such payment is
23 determined by the Division of Probation and Parole of the Idaho
24 Department of Corrections to be appropriate. The exact amount to
25 be paid, and the terms and conditions of payment, will be
26 determined by the Division of Probation and Parole.

 b. As a fundamental condition, the defendant shall pay a
minimum of \$200 per month toward restitution of \$7,982.46 to the
victim. (The restitution to the victim shall have higher priority
than the cost of supervision paid to the Idaho Department of
Correction.) (Defendant may not go to college until such
restitution is paid in full.)

 c. The defendant shall serve an additional sixty (60) days
in the Ada County Jail.

 d. The defendant shall serve a maximum of one hundred
twenty (120) days in jail to be imposed at the discretion of his
probation officer.

1 e. The defendant shall be signed up on probation in jail as soon as possible.

2 f. As a fundamental condition, the defendant shall gain and
3 maintain fulltime employment (which he shall maintain at least
until restitution is paid in full).

4 g. As a fundamental condition, the defendant shall complete
his Graduation Equivalency Degree (G.E.D.) within one hundred
5 eighty (180) days.

6 h. As a fundamental condition, the defendant shall complete
seven sixteen (16) hours of anger management with Tom Wilson, and a
7 minimum Level II intensive outpatient substance abuse treatment
8 program forthwith.

9 i. The defendant shall have no contact, directly or
indirectly, with the victim, Jake Norton.

10 j. The defendant shall attend a minimum of three (3) AA
11 meetings per week during the entire period of probation, obtain
an AA Sponsor, and complete all 12 steps in a 12-Step program.

12 k. The defendant shall not purchase, possess or consume any
13 drug (including marijuana) or alcoholic beverage during the
entire period of probation, be present in any establishment where
14 alcohol is a major source of income, nor be present with anyone
while they are drinking or using.

15 l. k. The Court would entertain a motion for early release
16 from jail if the defendant had 1) been signed up on probation,
2) had obtained at least a temporary AA Sponsor, and 3) had a
17 minimum Level II intensive outpatient substance abuse treatment
program lined up with a near-term start date.

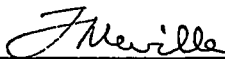
18 For record purposes only, the defendant is entitled to
19 credit for two hundred sixty-one (261) days served as of the 2nd
20 day of April, 2012.

21 4. That the probationer, if placed on probation to a
22 destination outside of the State of Idaho, with or without
permission of the director of Probation and Parole, does hereby
23 waive extradition to the State of Idaho and also agrees that the
24 said probationer will not contest any effort by any state to
25 return the probationer to the State of Idaho.

26 And it is further ordered that upon the expiration of the
period of suspension of the sentence as herein provided, and upon

1 written showing by or on behalf of the defendant that he has
2 fully complied with the term of his probation, then and in that
3 event, the Court may amend the judgment of conviction from a term
4 in the custody of the State Board of Correction to "confinement
5 in a penal facility" for 120 days, and the amended judgment may
6 be deemed to be a misdemeanor conviction.

7 Dated this 3rd day of April, 2012.

8 
9 THOMAS F. NEVILLE
10 District Judge

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STATE OF IDAHO
-- COUNTY OF ADA
I, CHRISTOPHER D. RICH, Clerk of the County Court of
the Fourth Judicial District of the State of Idaho, in and for
the County of Ada, do hereby certify that the foregoing is a
true and correct copy of the original on file in this office. In
witness whereof, I have hereunto set my hand and affixed
my official seal this 27th day
of Nov. 2012
CHRISTOPHER D. RICH, CLERK
By M. [Signature] ADA COUNTY Deputy

1 This is to certify that I have read, or had read to me, and
2 fully understand and accept all the conditions, regulations and
3 restrictions under which I am being granted probation. I will
4 abide by and conform to them strictly and fully understand that
5 my failure to do so may result in the revocation of my probation
6 and commitment to the Board of Correction to serve the sentence
7 originally imposed.

8 _____
9 Probationer's Signature

10 _____
11 Date of acceptance

12
13 WITNESSED:

14
15 _____
16 Probation and Parole Officer
17 State of Idaho

CERTIFICATE OF MAILING

I do hereby certify that on the 5th day of April, 2012, I caused to be emailed/mailed one copy of the within instrument to in this cause as follows:

ADA COUNTY PROSECUTOR

ADA COUNTY JAIL

DEPARTMENT OF CORRECTION

PRESENTENCE INVESTIGATION DEPARTMENT

GEORGE PATTERSON
PATTERSON LAW OFFICES, P.A.
410 S. ORCHARD STREET, SUITE 136
BOISE, IDAHO 83705

CHRISTOPHER D. RICH
Clerk of the District Court

By: 
Deputy Court Clerk

State's Attachment #2

APR 05 2012

CHRISTOPHER D. RICH, Clerk
By J. HOPPE
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,

Plaintiff,

vs.

RICHARD GLENN MORRIS,

[REDACTED]

Defendant.

Case No. CR-FE-2010-0015488

ORDER SUSPENDING SENTENCE
AND ORDER OF PROBATION

100801

WHEREAS on the 13th day of June, 2011, the defendant pled guilty in the District Court of the Fourth Judicial District in and for the County of Ada to the crime of: AGGRAVATED BATTERY, FELONY, I.C. §§18-903(a), -907(a), committed on or about the 12th day of September, 2010; and on the 29th day of August, 2011, the defendant was committed to the custody of the State Board of Correction for a period of ten (10) years, consisting of a fixed term of two (2) years followed by an indeterminate term of eight (8) years;

AND WHEREAS The Court retained jurisdiction for 365 days to suspend execution of Judgment pursuant to Section 19-2601(4) of the Idaho Code;

AND WHEREAS the District Court on the 2nd day of April, 2012, having ascertained the desirability of suspending execution of the judgment and placing the defendant on probation for the balance of said sentence;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the defendant be placed on probation, and sentence is hereby suspended for the balance of the ten (10)-year period, upon the following conditions, to-wit:

KH

1 1. That the probation is granted to and accepted by the
2 probationer, subject to all of its terms and conditions, and with
3 the understanding that the Court may, at any time, in case of the
4 violation of the terms of the probation, cause the probationer to
5 be returned to the Court, revoke the probation and order the
6 defendant returned to the custody of the State Board of
7 Correction to serve the sentence originally imposed.

8 2. That the probationer shall be under the legal custody
9 and control of the Director of Probation and Parole of the State
10 of Idaho and the District Court and subject to the rules of
11 probation as prescribed by the Board of Correction and the
12 District Court, and further the said probationer does hereby
13 agree and consent to the search of his person, automobile, real
14 property, and any other property at any time and at any place by
15 any law enforcement officer, peace officer, or probation officer,
16 and does waive his constitutional right to be free from such
17 searches.

18 3. Special Conditions, to-wit:

19 a. The defendant shall pay \$27.50 court costs, \$10 POST Fees,
20 \$10.00 ISTARS Fees, \$75 Victims' Compensation Fund, Emergency
21 Surcharge Fee in the amount of \$100.00, and a sum of not more than
22 \$60 per month for probation supervision if such payment is
23 determined by the Division of Probation and Parole of the Idaho
24 Department of Corrections to be appropriate. The exact amount to
25 be paid, and the terms and conditions of payment, will be
26 determined by the Division of Probation and Parole.

27 b. As a fundamental condition, the defendant shall pay a
28 minimum of \$200 per month toward restitution of \$7,982.46 to the
victim. (The restitution to the victim shall have higher priority
than the cost of supervision paid to the Idaho Department of
Correction.) (Defendant may not go to college until such
restitution is paid in full.)

 c. The defendant shall serve an additional sixty (60) days
in the Ada County Jail.

 d. The defendant shall serve a maximum of one hundred
twenty (120) days in jail to be imposed at the discretion of his
probation officer.

1 e. The defendant shall be signed up on probation in jail as
soon as possible.

2 f. As a fundamental condition, the defendant shall gain and
3 maintain fulltime employment (which he shall maintain at least
until restitution is paid in full).

4 g. As a fundamental condition, the defendant shall complete
his Graduation Equivalency Degree (G.E.D.) within one hundred
5 eighty (180) days.

6 h. As a fundamental condition, the defendant shall complete
7 sixteen (16) hours of anger management with Tom Wilson, and a
minimum Level II intensive outpatient substance abuse treatment
8 program forthwith.

9 i. The defendant shall have no contact, directly or
indirectly, with the victim, Jake Norton.

10 j. The defendant shall attend a minimum of three (3) AA
11 meetings per week during the entire period of probation, obtain
an AA Sponsor, and complete all 12 steps in a 12-Step program.

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13 drug (including marijuana) or alcoholic beverage during the
entire period of probation, be present in any establishment where
14 alcohol is a major source of income, nor be present with anyone
while they are drinking or using.

15 l. k. The Court would entertain a motion for early release
16 from jail if the defendant had 1) been signed up on probation,
2) had obtained at least a temporary AA Sponsor, and 3) had a
17 minimum Level II intensive outpatient substance abuse treatment
program lined up with a near-term start date.

18 For record purposes only, the defendant is entitled to
19 credit for two hundred sixty-one (261) days served as of the 2nd
20 day of April, 2012.

21 4. That the probationer, if placed on probation to a
22 destination outside of the State of Idaho, with or without
permission of the director of Probation and Parole, does hereby
23 waive extradition to the State of Idaho and also agrees that the
24 said probationer will not contest any effort by any state to
return the probationer to the State of Idaho.

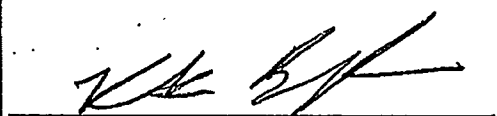
25 And it is further ordered that upon the expiration of the
26 period of suspension of the sentence as herein provided, and upon

1 This is to certify that I have read, or had read to me, and
2 fully understand and accept all the conditions, regulations and
3 restrictions under which I am being granted probation. I will
4 abide by and conform to them strictly and fully understand that
5 my failure to do so may result in the revocation of my probation
6 and commitment to the Board of Correction to serve the sentence
7 originally imposed.

8 
9 Probationer's Signature

10 4-24-2012
11 Date of acceptance

12
13 WITNESSED:

14 
15 Probation and Parole Officer
16 State of Idaho

CERTIFICATE OF MAILING

I do hereby certify that on the 5th day of April, 2012, I caused to be emailed/mailed one copy of the within instrument to in this cause as follows:

ADA COUNTY PROSECUTOR

ADA COUNTY JAIL

DEPARTMENT OF CORRECTION

PRESENTENCE INVESTIGATION DEPARTMENT

GEORGE PATTERSON

PATTERSON LAW OFFICES, P.A.

410 S. ORCHARD STREET, SUITE 136

BOISE, IDAHO 83705

CHRISTOPHER D. RICH

Clerk of the District Court

By: 
Deputy Court Clerk

State's Attachment #3

) Idaho Department of Correction
) Agreement of Supervision - Revised

1. **Supervision Level:** The defendant's level of supervision, including caseload type and electronic monitoring shall be determined by the Idaho Dept of Correction. RM
2. **Laws and Conduct:** The defendant shall obey all laws, municipal, county, state and federal. The defendant shall comply with all lawful requests of any agent of the Idaho Dept of Correction. The defendant shall be completely truthful at all times with any agent of the Idaho Dept of Correction. During any contact with law enforcement personnel the defendant shall provide their identity, notify the law enforcement officer(s) that they are under supervision and provide the name of their supervising officer. The defendant shall notify their supervising officer of the contact within 24 hrs. RM
3. **Residence:** The defendant shall not change residence without first obtaining permission from an authorized agent of the Idaho Dept of Correction. RM
4. **Reporting:** The defendant shall report to his/her supervising officer as directed. The defendant shall provide truthful and accurate information or documentation whenever requested by the Idaho Dept of Correction. RM
5. **Travel:** The defendant shall not leave the State of Idaho or the assigned district without first obtaining permission from his/her supervising officer. RM
6. **Extradition:** If the defendant does leave the State of Idaho, with or without permission, the defendant does hereby waive extradition to the State of Idaho and will not contest any effort to return the defendant to the State of Idaho. RM
7. **Employment/Alternative Plan:** The defendant shall seek and maintain gainful, verifiable, full-time employment. The defendant shall not accept, cause to be terminated from, or change employment without first obtaining written permission from his/her supervising officer. In lieu of full-time employment, the defendant may participate in full-time education, a combination of employment and education, vocational program or other alternative plan based on the offender's specific situation and as approved by his/her supervising officer. RM
8. **Alcohol:** The defendant shall not purchase, possess, or consume alcoholic beverages in any form and will not enter any establishment where alcohol is a primary source of income. RM
9. **Controlled Substances:** The defendant shall not use or possess any illegal drug. The defendant shall not use or possess any paraphernalia for the purpose of ingesting any illegal drug. The defendant shall not use or possess any controlled substances unless lawfully prescribed for him/her by a licensed physician or dentist. The defendant shall use medications only in the manner prescribed by their physician or dentist. RM
10. **Firearms/Weapons:** The defendant shall not purchase, carry, possess or have control of any firearms, chemical weapons, electronic weapons, explosives or other dangerous weapons. Other dangerous weapons may include, but are not limited to: knives with blades over two and one half inches in length, switch-blade knives, brass knuckles, swords, throwing stars and other martial arts weapons. Any weapons or firearms seized will be forfeited to IDOC for disposal. The defendant shall not reside in any location that contains firearms unless the firearms are secured and this portion of the rule is exempted in writing by the District Manager. RM
11. **Search:** The defendant shall consent to the search of his/her person, residence, vehicle, personal property, and other real property or structures owned or leased by the defendant or for which the defendant is the controlling authority conducted by any agent of the Idaho Dept of Correction or law enforcement officer. The defendant waives his/her Fourth Amendment Rights concerning searches. RM
12. **Cost of Supervision:** The defendant shall comply with Idaho Code 20-225, which authorizes the Idaho Dept of Correction to collect a cost of supervision fee. The defendant shall make payments as prescribed in his/her monthly cost of supervision bill. RM
13. **Associations:** The defendant shall not associate with any person(s) designated by any agent of the Idaho Dept of Correction. RM

14. **Substance Abuse Testing:** The defendant shall submit to any test for alcohol or controlled substances as requested and directed by any agent of the Idaho Dept of Correction or law enforcement officer. The defendant may be required to obtain tests at their own expense. If the results of the test indicate an adulterant has been used to interfere with the results, that test will be deemed to have been positive. RM

15. **Evaluation and Program Plan:** The defendant shall obtain any treatment evaluation deemed necessary and as ordered by the Court or any agent of the Idaho Dept of Correction. The defendant shall meaningfully participate in and successfully complete any treatment, counseling or other programs deemed beneficial and as directed by the Court or any agent of the Idaho Dept of Correction. The defendant may be required to attend treatment, counseling or other programs at their own expense. RM

16. **Cooperation with Supervision:** When home, the defendant shall answer the door for the probation officer. The defendant shall allow the probation officer to enter their residence, other real property, place of employment and vehicle for the purpose of visitation, inspections and other supervision functions. The defendant shall not possess, install or use any monitoring instrument, camera, or other surveillance device to observe or alert them to the approach of his/her probation officer. The defendant shall not keep any vicious or dangerous dog or other animal on or in their property that the probation officer perceives as an impediment to accessing the defendant or their property. RM

17. **Absconding Supervision:** The defendant will not leave or attempt to leave the state or the assigned district in an effort to abscond or flee supervision. The defendant will make himself/herself available for supervision and program participation as instructed by the probation officer and will not actively avoid supervision. RM

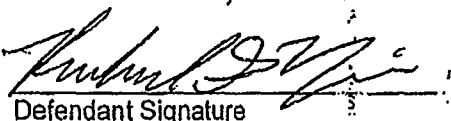
18. **Court Ordered Financial Obligations:** The defendant shall pay all costs, fees, fines and restitution in the amount and manner ordered by the Court. The defendant shall make payments as ordered by the Court or as designated in a Payment Agreement and Promissory Note to be completed with an agent of the Idaho Dept of Correction and signed by the defendant. RM

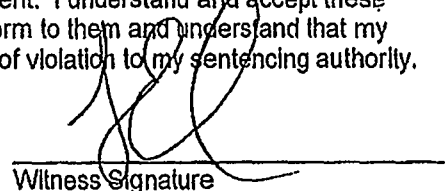
19. **Confidential Informant:** The defendant shall not act as a confidential informant for law enforcement except as allowed per Idaho Dept of Correction policy. RM

20. **Intrastate/Interstate Violations:** If allowed to transfer supervision to another district or state, the defendant agrees to accept any violation allegation documents purportedly submitted by the agency/officer supervising the defendant in the receiving district or state as admissible into evidence as credible and reliable. The defendant waives any right to confront the author of such documents. RM

21. **Additional Rules:** The defendant agrees that other supervision rules may be imposed depending on the district or specific field office that provides his/her supervision. At all times, these additional rules will be imposed only after considering the successful supervision of the defendant and the secure operation of the district or specific field office. All additional rules will be explained to the defendant and provided to him/her, in writing, by an agent of the Idaho Dept of Correction. RM

I have read, or have had read to me, the above agreement. I understand and accept these conditions of supervision. I agree to abide by and conform to them and understand that my failure to do so may result in the submission of a report of violation to my sentencing authority.


Defendant Signature


Witness Signature

April 12, 2012
Date

Witness Name (printed)

122
MS
12/14
2:30

ADA COUNTY PUBLIC DEFENDER
Attorney for Defendant
200 West Front Street
Boise, Idaho 83702
Telephone: (208) 287-7400
Facsimile: (208) 287-7409

NO. _____
A.M. _____ P.M. _____
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DEC 11 2012

CHRISTOPHER D. RICH, Clerk
By KATRINA CHRISTENSEN
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,)	
)	
Plaintiff,)	
	)	Criminal No. CR FE 12 13672
vs.)	
	)	RESPONSE TO STATE'S
RICHARD GLENN MORRIS,	)	OBJECTION TO MOTION
	)	TO SUPPRESS
Defendant.)	
)	
)	

COMES NOW, the above named defendant, RICHARD MORRIS, by and through his attorney of record, the Ada County Public Defender's Office, JONATHAN D. LOSCHI, handling attorney, and submits this Response to arguments raised by the state in opposition to the Motion to Suppress.

ARGUMENT

I. State v. Slater does not support the traffic stop in this case.

The state filed the State's Response to Defendant's Motion to Suppress on November 20, 2012. The state argues that the Court of Appeals decision in State v. Slater, 136 Idaho 293 (Ct.App.2001) refutes the defendant's claim that the stop in this case was unlawful. The Court of Appeals cited to Idaho Code Section 49-630(1) which requires that a vehicle be driven on the

right half of the roadway, except in certain circumstances that are not applicable in this case. "Roadway" is defined as that portion of the highway that is "improved, designed or ordinarily used for vehicular travel." Idaho Code Section 49-119(18). It does not include "sidewalks, shoulders, berms [or] rights-of-way." Therefore, the Court of Appeals reasoned that when the officer saw Slater's tires cross the fog line, the officer possessed reasonable suspicion that Slater had violated Idaho Code Section 49-630.

This case is distinguishable from Slater. In Slater, the defendant crossed the fog line on a highway on-ramp while entering the highway. Presumably the area to the right of the fog line in Slater was not considered "roadway". In the present case, the defense expects the evidence will show that Latah Street in Boise, Idaho, is very different. The evidence will show that parking is permitted on the side of Latah Street against the curb and in the direction of traffic, and that to the left of these parked vehicles is a bike lane marked by two solid white lines. The "fog line" that the defendant in this case is accused of crossing is actually the outer line demarcating the bike lane. The area to the right of this line is ordinarily used for vehicular travel for cars parking along the street or turning off of Latah.

Further, Idaho Code Section 49-630, if read this way, is at odds with Idaho Code Section 49-637. The duty of a driver in Idaho is to operate a vehicle "as nearly as practicable" within a single lane. Idaho Code Section 49-637.

II. The Defendant has standing to challenge the stop.

The defendant was at the time of the stop on felony probation. Officer Cromwell did not know this information at the time of the stop. The state argues in their Supplemental Response that the

search waiver, and an implied stop waiver necessary to effectuate that search waiver, do not allow the defendant to challenge the stop.

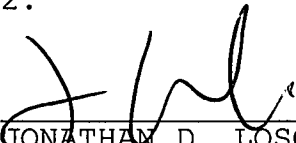
Attorney for the defendant is unaware of any Idaho case law that allows an officer who makes an otherwise illegal stop to rely on a previously unknown Fourth Amendment waiver to uphold that stop. The Idaho cases that this attorney has reviewed that deal with Fourth Amendment waivers all involve some prior knowledge of a probation/parole waiver. Either the stop/search is performed by the probation officer with accompanying law enforcement, is done by law enforcement with the authorization of probation/parole, or is done by law enforcement pursuant to the Fourth Amendment Waiver. The state cited to State v. Gawron, 112 Idaho 841 (1987) and State v. Purdum, 147 Idaho 206 (2009). In Gawron, the defendant was searched by probation and parole pursuant to his waiver. In Purdum, the defendant was seized and searched by a law enforcement officer who was specifically acting on his personal knowledge of the defendant's search waiver. The Purdum court did not make the broad holding that the state argues here. The court specifically said "[he] consented to submit to random evidentiary testing, and, therefore, he impliedly consented to a limited seizure of his person necessary to effectuate such searches." Purdum at 210.

The United States Supreme Court declined to decide whether the probation condition so diminished, or completely eliminated, the probationer's reasonable expectation of privacy that a search unsupported by individualized suspicion would have been reasonable. US v. Knights, 534 U.S. 112, 120 (2001). In Samson v. California, 547 U.S. 843 (2006) the Supreme Court reasoned that parolees have even fewer expectations of privacy than probationers, but disavowed the proposition that parolees, like prisoners, have no Fourth Amendment rights. In State v. Cruz, 144 Idaho 906 (Ct.App.2007) the Idaho Court of Appeals implicitly

recognized instances in which a search would not be upheld even in the presence of a waiver. In that case, the court articulated the "the record does not indicate that the officers conducted the search with the intent to harass Cruz or to use Cruz's suspected presence solely as a pretext." Id. at 910. More recently, the Idaho Court of Appeals has stated that "[a]bsent such reasonable suspicion, a probation search conducted pursuant to a Fourth Amendment waiver contained in a probation agreement must still pass the test of the Fourth Amendment—reasonableness under all circumstances." State v. Robinson, 152 Idaho 961, 964-5 (Ct.App.2012) quoting State v. Pinson, 104 Idaho 227, 231-32 (Ct.App.1983). It is clear that there are minimum standards to be met even in probation searches conducted pursuant to waivers.

In the present case, the defendant was not stopped based upon his Fourth Amendment waiver, or with any intent to effectuate his Fourth Amendment waiver.

Dated this 11 day of December, 2012.



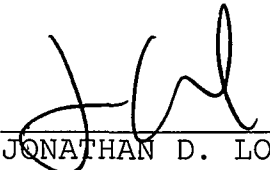
JONATHAN D. LOSCHI
Attorney for Defendant

CERTIFICATE OF MAILING

I HEREBY CERTIFY, that on this 11 day of December, 2012, I mailed a true and correct copy of the foregoing to the:

Ada County Prosecutor

By depositing the same in interdepartmental mail.



JONATHAN D. LOSCHI
Attorney for Defendant

Time	Speaker	Note
<u>2:31:20 PM</u>	Case Called	State v. Richard Morris FE-12-13672 C MN Suppress Jon Loschi State v. Crystal Phillips FE-12-12803 Bond MN Suppress Layne Davis
<u>2:31:36 PM</u>	States Attorney	Dan Dinger
<u>2:31:38 PM</u>	Defense Attorney	Jon Loschi for Richard Morris
<u>2:32:07 PM</u>	Defense Attorney	Layne Davis for Crystal Phillips
<u>2:32:50 PM</u>	Judge	Deny States motion to Dismiss
<u>2:34:04 PM</u>	States Attorney	Calls SW#1 Officer James Cromwell/Sworn
<u>2:34:15 PM</u>	Jon Loschi	Stip to Training/Detection of Marijuana
<u>2:34:30 PM</u>	Layne	Stip to Training/Detection of Marijuana
<u>2:34:59 PM</u>	States Attorney	DX SW#1
<u>2:49:02 PM</u>	Jon Loschi	CX SW#1
<u>3:01:36 PM</u>	Layne Davis	CX SW#1
<u>3:03:04 PM</u>	States Attorney	RDX SW#1
<u>3:05:02 PM</u>	Defense Attorney's	No RCX
<u>3:05:12 PM</u>	Judge	Question SW #1
<u>3:05:45 PM</u>	Judge	SW#1 Excused
<u>3:05:51 PM</u>	States Attorney	calls SW#2 Officer Marshal Payisted/Sworn
<u>3:06:30 PM</u>	Jon Loschi	Stip to Training/Detection of Marijuana
<u>3:06:40 PM</u>	Layne Davis	Stip to Training/Detection of Marijuana
<u>3:06:44 PM</u>	States Attorney	DX SW#2
<u>3:10:58 PM</u>	Jon Loschi	CX SW#2
<u>3:13:07 PM</u>	Layne Davis	No CX
<u>3:13:19 PM</u>	Judge	Excuse SW #2
<u>3:13:22 PM</u>	States Attorney	Rest
<u>3:22:42 PM</u>	Recess	
<u>3:22:46 PM</u>	Recall	
<u>3:23:20 PM</u>	Jon Loschi	Calls DW#1 P & P Officer Stacy Lockner/ Sworn
<u>3:24:13 PM</u>	Jon Loschi	DX DW#1
<u>3:26:34 PM</u>	" "	Moves to Mark DE #A
<u>3:29:12 PM</u>	" "	Moves to Admit DE #A
<u>3:29:22 PM</u>	State & Defense	No Objections

<u>3:29:27 PM</u>	Judge	Admits DE #A
<u>3:29:37 PM</u>	Layne Davis	No Questions
<u>3:29:45 PM</u>	States Attorney	CX DW#1
<u>3:31:48 PM</u>	Judge	Question DW #1
<u>3:32:19 PM</u>	Judge	Excuse DW #1
<u>3:32:25 PM</u>	Jon Loschi	Calls DW #2 Richard Morris/Sworn
<u>3:33:04 PM</u>		DX DW#2
<u>3:34:58 PM</u>		Moves to mark DE #B and DE #C
<u>3:42:06 PM</u>		Moves to Admit #B and #C
<u>3:42:17 PM</u>	States Attorney	No Objections
<u>3:42:22 PM</u>	Judge	Admits DE #B and DE #C
<u>3:42:28 PM</u>	Layne Davis	No CX
<u>3:42:32 PM</u>	States Attorney	CX DW #2
<u>3:42:56 PM</u>	Jon Loschi	Objects
<u>3:43:12 PM</u>	States Attorney	Response
<u>3:43:39 PM</u>	Judge	Question
<u>3:44:08 PM</u>	States Attorney	Response
<u>3:44:29 PM</u>	Judge	Question
<u>3:45:01 PM</u>	Judge	Sustain
<u>3:45:08 PM</u>	States Attorney	Makes Record
<u>3:45:39 PM</u>	States Attorney	Continue CX
<u>3:46:04 PM</u>	Jon Loschi	Objection asked and answered
<u>3:46:06 PM</u>	Judge	Sustained
<u>3:46:57 PM</u>	Jon Loschi	Objection asked
<u>3:47:05 PM</u>	Judge	Overruled
<u>3:47:35 PM</u>	Jon Loschi	Objection Asked and Answered
<u>3:47:37 PM</u>	Judge	Sustained
<u>3:48:30 PM</u>	Jon Loschi	Objection
<u>3:48:33 PM</u>	States Attorney	Response
<u>3:49:10 PM</u>	Jon Loschi	Response
<u>3:49:44 PM</u>	Judge	Overruled
<u>3:50:27 PM</u>	Layne Davis	No Further
<u>3:50:33 PM</u>	Jon Loschi	No Further
<u>3:50:35 PM</u>	Judge	Question
<u>3:51:40 PM</u>	States Attorney	CX DW #2

<u>3:52:27 PM</u>	Judge	DW #2 Step Down
<u>3:52:40 PM</u>	Layne Davis	Rest No Testimony
<u>3:52:48 PM</u>	States Attorney	Recall SW#1 Officer Cromwell
<u>3:53:32 PM</u>	States Attorney	DX SW #1
<u>3:56:10 PM</u>	Jon Loschi	No CX
<u>3:56:13 PM</u>	Layne Davis	CX SW #1
<u>3:57:02 PM</u>	Judge	Excuse SW #1
<u>3:57:19 PM</u>	Parties	Rest
<u>3:57:28 PM</u>	Jon Loschi	Closing Argue
<u>4:06:52 PM</u>	Judge	Questions
<u>4:18:32 PM</u>	Layne Davis	Closing Argue
<u>4:25:58 PM</u>	Judge	Questions
<u>4:27:15 PM</u>	States Attorney	Closing Argue
<u>4:40:59 PM</u>	Judge	Question
<u>4:42:27 PM</u>	Defense Atty's	No Further
<u>4:43:38 PM</u>		End of Case
<u>4:43:38 PM</u>		
<u>4:43:38 PM</u>		

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PAC
(11-)

ADA COUNTY PUBLIC DEFENDER
Attorneys for Defendant

JONATHAN D. LOSCHI, ISB #6002
Deputy Public Defender
200 West Front Street, Suite 1107
Boise, Idaho 83702
Telephone: (208) 287-7400
Facsimile: (208) 287-7409

NO. _____ FILED _____
A.M. _____ P.M. _____

DEC 14 2012

CHRISTOPHER D. RICH, Clerk
By KATRINA CHRISTENSEN
DEPUTY

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

STATE OF IDAHO,

Plaintiff,

vs.

RICHARD GLENN MORRIS,

Defendant.

Case No. CR-FE-2012-0013672

**DEFENDANT'S DISCOVERY
RESPONSE TO COURT**

COMES NOW, Richard Glenn Morris, Defendant above-named, by and through counsel JONATHAN D. LOSCHI, Ada County Public Defender's office, and informs this Court that Defendant has complied with the State's request for discovery by serving upon DANIEL R. DINGER, counsel for the state of Idaho, with Defendant's Response to Request for Discovery on the above-filed date.

DATED, Wednesday, December 12, 2012.



JONATHAN D. LOSCHI
Attorney for Defendant

CERTIFICATE OF MAILING

I HEREBY CERTIFY, that on Wednesday, December 12, 2012, I mailed (served) a true and correct copy of the within instrument to:

DANIEL R. DINGER
Ada County Prosecutor's office
Interdepartmental Mail



Jacob R. Precht

DEFENDANT'S DISCOVERY RESPONSE TO COURT

000111

DEC 20 2012

CHRISTOPHER D. RICH, Clerk
By SHANTY ABBOTT
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Case No. CRFE-2012-13672

Plaintiff,

ORDER DENYING MOTION TO
SUPPRESS EVIDENCE

vs.

RICHARD GLENN MORRIS,

Defendant.

BACKGROUND

On August 1, 2012, as a result of a traffic stop conducted by Officer Cromwell, Richard Morris was arrested and charged with possession of marijuana with the intent to deliver. Idaho Code § 37-2732(a). As a result of the same traffic stop, Morris' passenger, Chrystal Phillips, was also charged with possession of marijuana with intent to deliver. § 37-2732(a); § 18-204.

On November 8, 2012, Morris filed a motion to suppress the marijuana seized and a memorandum in support. On November 20, 2012, the prosecution filed its objection and memorandum in support. On November 21, 2012, Phillips filed a motion to suppress the marijuana seized and a memorandum in support. The State filed its

1 objection on December 4, 2012. Both sides filed supplemental briefing on the issue of
2 waiver. On December 14, 2012 an evidentiary hearing was conducted on the motions
3 to suppress.

4 All parties agreed that the Court should address both defendants' motions to
5 suppress in one hearing. The prosecution agreed to call the State's witnesses first,
6 thus waiving the requirement that the defendants make an initial showing regarding
7 standing and the claimed violation. The evidentiary hearing lasted over two hours and
8 four witnesses testified: (1) Officer Cromwell, who initiated the traffic stop; (2) Officer
9 Plaisted, the canine officer; (3) Probation Officer Stacy Lockner, who talked to Officer
10 Cromwell shortly after Officer Cromwell conducted the traffic stop, and (4) Richard
11 Morris, defendant. Ms. Phillips, the co-defendant, elected not to testify. Three exhibits
12 were admitted: (1) Defendant Morris' Exhibit A (probation and parole officer "c note");
13 (2) Defendant Morris' Exhibit B (photograph of Latah Street); (3) Defendant Morris'
14 Exhibit C (photograph of Latah Street).
15

16 On December 18, 2012, Defendant Phillips filed a supplemental memorandum in
17 support of her motion to suppress.
18

19 **DEFENDANTS HAVE NOT WAIVED THEIR ABILITY TO CHALLENGE**
20 **THE TRAFFIC STOP**

21 The State argues as a preliminary matter that, based upon the 4th Amendment
22 waiver he signed as part of his felony probation, Defendant Morris waived his ability to
23 challenge a search and seizure. The State argues that co-defendant Philips similarly
24 "does not have room to complain about her seizure because she was with Defendant at
25
26

1 the time that he was lawfully seized and a search conducted." *December 7, 2012*
2 *Supplemental Response to Defendants' Motion to Suppress*, p.5.

3 The relevant portion of the probation agreement states that the probationer
4 Morris "does hereby agree and consent to the search of his person, automobile, real
5 property, and any other property at any time and at any place by any law enforcement
6 officer, peace officer, or probation officer, and does waive his constitutional right to be
7 free from such searches." *Id.*, p.2.

8 Even assuming Morris has waived his ability to challenge the search of the car
9 he was driving, the search of the car he was driving is not at issue. Morris (and his co-
10 defendant) challenge the seizure of their persons; that is, the initial detention. Nothing
11 in Morris' probation agreement waives his ability to challenge the seizure of his person.
12

13 The State argues that Morris' waiver regarding searches implies a waiver
14 regarding seizures conducted for the purpose of effectuating a search. That may be.
15 However, those are not the facts of this case.

16 In this case, Officer Cromwell was not aware of Morris' status as a probationer
17 until he spoke with Morris. In other words, Officer Cromwell did not seize Morris for the
18 purpose of effectuating a search on a probationer. The State has cited no cases or
19 other authority, nor is the Court aware of any cases or other authority (including the
20 probation agreement in this instance), that support the proposition that a probationer
21 waives his ability to challenge a seizure even when the seizing officer is unaware of the
22 probationer's status and waiver at the seizure's inception.
23

24 The Court finds that both defendants may challenge the constitutionality of the
25 traffic stop in this case.
26

FACTS

Sometime after midnight on August 1, 2012, Richard Morris and his passenger, Chrystal Phillips, drove away from a well-known drug house. Officer Cromwell was driving three to four car lengths behind Morris when he observed Morris' two right tires entirely cross a white line to the right for a few seconds. It is unknown whether the line demarcated a bike path to the right or parking to the right. In either event, the line marked the right hand boundary of Morris' lane of travel. Morris was not attempting to avoid obstacles in his lane of travel when he drifted to the right.

Based upon his observation, Officer Cromwell initiated a traffic stop on the car Morris was driving.¹ Officer Cromwell informed dispatch at 1:37:47 a.m. that he was initiating the traffic stop. Five seconds later, at 1:37:52 a.m., Officer Cromwell called for a canine officer to assist him with the traffic stop. Morris pulled over on Overland, just to the east of Latah Street.

When Officer Cromwell approached the vehicle Morris was driving, Officer Cromwell immediately smelled raw marijuana, which he is trained to detect. Officer Cromwell called probation and parole after learning from defendant Morris that he was on felony probation. Officer Cromwell spoke with probation officer Stacy Lockner. Officer Cromwell told probation officer Lockner that Morris' car had just left a known drug house.

¹ Officer Cromwell testified that he believed Morris might be driving under the influence. The Court specifically does not include this in its factual findings.

1 The canine officer, Officer Plaisted, arrived with his dog Turk at 1:42:15 a.m.
2 Turk is certified to alert on various controlled substances, including marijuana, and he
3 alerted on the car Morris was driving. Approximately ½ pound of marijuana was
4 subsequently found in a purse on the passenger's floorboard where co-defendant
5 Phillips had been sitting. Morris and Phillips were questioned about the marijuana.
6 Morris was taken from the scene at about 2:35 a.m. The entire detention lasted about
7 an hour. As a result of the marijuana both defendants were charged with possession
8 with intent to deliver.

9 RELEVANT LAW

10 The Idaho Court of Appeals set forth the relevant law surrounding this Court's
11 determination as follows:
12

13 The stop of a vehicle constitutes a 'seizure' of the occupants that
14 implicates the Fourth Amendment guarantee against unreasonable
15 searches and seizures. Therefore, in order for such a stop to be lawful, it
16 must be based upon an officer's reasonable suspicion that the vehicle is
17 being driven contrary to traffic laws or that other criminal activity is afoot.
18 Reasonable suspicion requires less than probable cause but more than
19 speculation or instinct on the part of the officer. The reasonableness of
20 the suspicion must be evaluated upon the totality of the circumstances –
21 the information known to the officer at the time of the stop must yield a
22 particularized and objective basis for the officer's suspicion. It is the
23 state's burden to demonstrate reasonable suspicion for the stop.

24 *State v. Horton*, 150 Idaho 300, 302, 246 P.3d 673, 675 (2010) (citations omitted).

25 THE UNWARRANTED CROSSING OF THE FOG LINE IS A TRAFFIC 26 INFRACTION THAT PROVIDES REASONABLE SUSPICION FOR A TRAFFIC STOP

Both defendants and the prosecution have spent a considerable amount of time
and energy – and presented excellent briefing and oral argument – on the question

1 whether the facts Officer Cromwell testified to at the preliminary hearing, and again at
2 the suppression hearing, constitute a traffic law violation. This Court finds that, under
3 Idaho law, it does not matter whether Morris crossed a line demarcating a bike path or a
4 parking area – both types of crossings would constitute reasonable suspicion that a
5 traffic violation occurred under I.C. § 49-630 or I.C. § 49-637.

6 In *State v. Slater*, 136 Idaho 293, 298, 32 P.3d 685, 690 (2001), the Court of
7 Appeals wrote:

8 Accordingly, when Officer Burns observed Slater's tires cross the fog line,
9 albeit fleetingly, Burns now possessed the requisite reasonable suspicion
10 that Slater had violated I.C. § 49-630 by driving on the shoulder of the
highway, rather than on the "roadway."

11 *Id.* at 298, 32 P.3d at 690.

12 According to the Court of Appeals' decision in *Slater*, the actions observed by
13 Officer Cromwell constituted reasonable suspicion for the stop.

14 15 16 DISCUSSION

17 Viewing the totality of the circumstances in this case, Officer Cromwell did have
18 reasonable articulable suspicion to stop the car that Morris was driving based upon the
19 observed traffic violation.

20 Officer Cromwell's testimony at the suppression hearing was problematic, to say
21 the least. There are two areas, in particular, where Officer Cromwell's testimony was
22 demonstrably inaccurate. First, Officer Cromwell testified that when he first saw
23 Morris, they were both driving down the road. Officer Cromwell stated that he followed
24 Morris only because they both happened to be going the same direction. Officer
25

1 Cromwell denied that he was following Morris because Morris had recently left a well-
2 known drug house. Officer Cromwell denied even seeing Morris leave a well-known
3 drug house. The problem with this testimony is that, on August 1, 2012, right after he
4 stopped Morris, Officer Cromwell told probation officer Lockner that he stopped Morris
5 after Morris left a known drug house. This fact is irreconcilable with Officer Cromwell's
6 testimony to the contrary.

7 Second, Officer Cromwell testified at the suppression hearing that he called for a
8 canine only after he detected an odor of marijuana coming from Morris' car. The "CAD
9 report" shows the opposite; namely, that Officer Cromwell called for a canine before he
10 approached the car Morris was driving, not after. To be clear, the problem with Officer
11 Cromwell's testimony is not that he called for a drug dog before he approached Morris'
12 vehicle. That is fine. The problem with Officer Cromwell's testimony is that it is
13 factually inaccurate.
14

15 The Court is faced with the difficult circumstance, and frankly, very close call, of
16 deciding whether a witness whose memory is so flawed on key events can nevertheless
17 be trusted regarding the only question at issue here: whether Morris' car drifted over a
18 white line on the roadway. The Court finds that Officer Cromwell is credible on this
19 issue. In finding Officer Cromwell credible on this issue, the Court relies upon several
20 factors. The Court relies on: (1) its own observation of Officer Cromwell's demeanor
21 when testifying; (2) Officer Cromwell's truthful testimony that he followed Morris for ½ to
22 ¾ of a mile, looking for additional traffic violations against Morris but finding none; and
23 (3) the fact that Officer Cromwell told Morris *at the time of the stop* that he pulled him
24 over for crossing a white line.
25
26

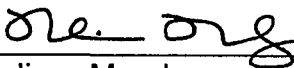
1 Based upon Officer Cromwell's credible testimony that Morris drifted entirely over
2 the white line to the right for a few seconds, this Court finds that there was reasonable
3 articulable suspicion for the traffic stop.
4

5 **CONCLUSION**

6 The defendants have not waived their ability to bring a 4th Amendment challenge
7 to the traffic stop in this case. The State has the burden of showing that there was
8 reasonable articulable suspicion for the traffic stop. Based on the evidence presented,
9 the State has met this burden. Therefore, the Defendants' motion to suppress the
10 marijuana seized as a result of the August 1, 2012 traffic stop is DENIED.
11

12
13 IT IS SO ORDERED.

14 DATED this 20 day of December 2012.

15
16 
17 _____
18 Melissa Moody
19 District Judge
20
21
22
23
24
25
26

CERTIFICATE OF MAILING

I hereby certify that on the 20th day of December 2012, I served a true and correct copy of the within instrument to:

Daniel Dinger
DEPUTY ADA COUNTY PROSECUTING ATTORNEY
INTERDEPARTMENTAL MAIL

Jonathan Loschi
DEPUTY ADA COUNTY PUBLIC DEFENDER
INTERDEPARTMENTAL MAIL

CHRISTOPHER D. RICH
Clerk of the District Court

By: 

Deputy Clerk

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PAC
3/1@
11:00A

NO. 10
A.M. 10 FILED P.M.

FEB 05 2013

CHRISTOPHER D. RICH, Clerk
By SARA WRIGHT
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

Daniel R. Dinger
Deputy Prosecuting Attorney
200 W. Front Street, Suite 3191
Boise, Idaho 83702
Telephone: (208) 287-7700

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,

Plaintiff,

vs.

RICHARD GLENN MORRIS,

Defendant.

Case No. CR-FE-2012-0013672

**STATE'S RESPONSE TO
DEFENDANT'S SPECIFIC
REQUEST FOR DISCOVERY**

COMES NOW, Daniel R. Dinger, Deputy Prosecuting Attorney in and for the State of Idaho, County of Ada, and hereby responds to the Defendant's Specific Request for Discovery, as follows:

1. Written reports by Officer Markle are still in progress, copies will be forwarded upon receipt.

**STATE'S RESPONSE TO DEFENDANT'S SPECIFIC REQUEST FOR
DISCOVERY (MORRIS), Page 1**

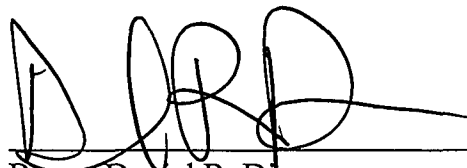
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SW

2. Handwritten notes by Detective Christensen were disclosed in an addendum to discovery provided on February 4th, 2013.

DATED this 4th day of February 2013.

GREG H. BOWER
Ada County Prosecuting Attorney



By: Daniel R. Dinger
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4 day of February 2013, I caused to be served, a true and correct copy of the foregoing ***STATE'S RESPONSE TO DEFENDANT'S SPECIFIC REQUEST FOR DISCOVERY*** upon the individual(s) named below in the manner noted:

Name and address: Jonathan D. Loschi, Ada County Public Defender, 200 W. Front Street, Rm. 1107, Boise, Idaho 83702

☒ By depositing copies of the same in the interdepartmental mail


Kate Curtis
Legal Assistant

22
PTC
3/1
11A

NO. 10 FILED
A.M. 10 P.M.

FEB - 7 2013

CHRISTOPHER D. RICH, Clerk
By ELAINE TONG
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

Daniel R. Dinger
Deputy Prosecuting Attorney
200 West Front Street, Room 3191
Boise, Idaho 83702
Telephone: (208) 287-7700

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,)	
	)	Case No. CR-FE-2012-0013672
Plaintiff,)	
vs.	)	NOTICE OF INTENT TO PRESENT
	)	I.R.E. 404(b) EVIDENCE OF
RICHARD GLENN MORRIS,	)	DEFENDANT'S PRIOR SALES OF
	)	MARIJUANA
Defendant.)	
_____)	

COMES NOW, Daniel R. Dinger, Deputy Prosecuting Attorney for Ada County,
State of Idaho, and notifies the Court and counsel for Defendant Morris of the State's
intent to present evidence that may be determined to fall within the purview of I.R.E.
404(b). The State intends to present evidence that during an interview with Detective
Clay Christensen on the day of the charged offense, Defendant Morris admitted that "he
has been selling marijuana and that the half pound was for him to sell." More
specifically, the State intends to present evidence that before the day in question

Defendant Morris had engaged in prior sales of marijuana. Furthermore, Defendant has listed his co-defendant, Chrystal Phillips, as a potential witness at his trial. In the event that she testifies, the State intends to question her about the substance of a statement that she made to Detective Christensen during her own interview in which she admitted that she knew the person from whom Morris had just purchased the marijuana that was found in the defendants' possession, but that she "cannot deal with him directly without Morris." It is the State's position that this statement implies that Morris has had prior drug sale-related interactions with the source of the marijuana in his possession that day.

The above-referenced information will be presented as evidence of intent, which is a critical element of the crime of Possession of a Controlled Substance with Intent to Deliver—the offense with which Defendant is charged.

I. FACTS

Defendant Morris and his co-defendant, Chrystal Phillips, are each charged with Possession of a Controlled Substance with the Intent to Deliver. On August 1, 2012, Defendants were stopped by law enforcement when the vehicle that Defendant Morris was driving was seen crossing and straddling the white fog line. Both the officer who initially made the stop and a K-9 officer who arrived shortly thereafter were able to smell the odor of un-burnt marijuana coming from the vehicle. During the encounter Phillips told law enforcement that she had a half of a pound of marijuana in her purse, which was located on the passenger floorboard. A certified narcotics dog alerted on the vehicle and a subsequent search revealed over 200 grams of marijuana in Phillips' purse.

That same day both Phillips and Defendant Morris spoke with Detective Clay Christensen of the Boise Police Department. Both did so after being notified of their rights under *Miranda* and signing a waiver. During his interview Morris told Detective Christensen that he was on felony probation for Aggravated Battery, that he was unemployed at the time of the interview, that he and Phillips had just left a residence where they had picked up one half pound of marijuana, that he had been selling marijuana and that the half pound found in their vehicle that night was for him to sell, and that he currently owed his source \$300.00 for the marijuana. Phillips told Detective Christensen that prior to being stopped she and Morris had been at an apartment on Latah Street and that they had picked up the marijuana found in their vehicle from that apartment. She also told Detective Christensen that she knew the person from whom they acquired the marijuana but that she could not deal with that person directly without Morris.

II. GENERAL PRINCIPLES OF I.R.E. 404(b)

In Idaho a two-tiered analysis is employed to determine whether evidence of other crimes, wrongs, or acts may be admitted under I.R.E. 404(b). First, “the evidence must be relevant to a material issue concerning the crime charged.” *State v. Hassett*, 124 Idaho 357, 361 (Id. Ct. App. 1988). There must also be sufficient evidence to establish the prior bad act as fact. *See State v. Grist*, 147 Idaho 49, 52 (Idaho 2009). Second, “the probative value of the evidence must not be substantially outweighed by the danger of unfair prejudice.” *Hassett*, 124 Idaho at 361. With respect to this second tier of the applicable

Not the
standard

test, it is important to note that the law requires a consideration of “unfair prejudice” and not just prejudice to a defendant’s position.

In terms of making a prejudice determination, the Idaho Court of Appeals has held that the prejudicial effect of admitting evidence substantially outweighs the probative value of the evidence only when there exists a “danger that it will stir such passion in the jury as to sweep them beyond a rational consideration of guilt or innocence of the crime on trial.” *State v. Stoddard*, 105 Idaho 533, 537 (Id. Ct. App. 1983) (quoting McCormick, *Handbook of the Law of Evidence* § 190 (1972)). *See also United States v. Mares*, 441 F.3d 1152, 1157 (10th Cir. 2006) (quoting and explaining the holding of *United States v. Tan*, 254 F.3d 1204, 1211-12 (10th Cir. 2001)) (“[I]n order for evidence to be inadmissible under Rule 403 the evidence’s unfair prejudice must do more than ‘damage the [d]efendant’s position at trial,’ it must ‘make[] a conviction more likely because it provokes an emotional response in the jury or otherwise tends to affect the jury’s attitude toward the defendant wholly apart from its judgment as to his guilt or innocence of the crime charged.”); *State v. Killpack*, 191 P.3d 17, 29 (Utah 2008) (“Only when evidence poses a danger of ‘rous[ing] the jury to overmastering hostility’ does it reach the level of unfair prejudice that rule 403 is designed to prevent.”). When no such danger of an irrational consideration of guilt exists, exclusion is not required. Whether evidence is admissible under this analysis is entirely within the trial court’s discretion. *See State v. Guinn*, 114 Idaho 30, 39 (Id. Ct. App. 1988).

With regard to the admission of evidence pursuant to I.R.E. 404(b) and equivalent rules from other jurisdictions, many appellate courts have held that Rule 404(b) is an

inclusionary rule rather than an exclusionary one, meaning that there is a presumption of admissibility of evidence of other crimes, wrongs, or acts so long as the evidence presented is admitted for a purpose other than to show a propensity to act in conformity therewith. *See, e.g., State v. Faulkner*, 638 S.E.2d 18, 24 (N.C. Ct. App. 2006) (“[Rule 404(b)] is a clear general rule of inclusion of relevant evidence of other crimes, wrongs or acts . . . subject to but one exception requiring its exclusion if its only probative value is to show that the defendant has the propensity or disposition to commit an offense of the nature of the crime charged.”); *United States v. Walker*, 428 F.3d 1165, 1169 (8th Cir. 2005) (“[Rule 404(b)] is a rule of inclusion, meaning that evidence offered for permissible purposes is presumed admissible absent a contrary determination.”); *United States v. Zeuli*, 725 F.2d 813, 816 (1st Cir. 1984) (“The most striking aspect of [Rule 404(b)] is its inclusive rather than exclusionary nature: should the evidence prove relevant in any other way it is admissible, subject only to the rarely invoked limitations of rule 403.”). Furthermore, given the inclusive nature of I.R.E. 404(b), a number of appellate courts have urged that trial judges use the ability to exclude such probative evidence sparingly. *See United States v. Betancourt*, 734 F.2d 750, 757 (11th Cir. 1984) (“[Exclusion under Rule 403 is an] extraordinary remedy which should be used only sparingly since it permits the trial court to exclude concededly probative evidence.”); *United States v. Jamil*, 707 F.2d 638, 642 (2nd Cir. 1983) (holding that because the authority to exclude relevant evidence is such a “powerful tool,” judges “must take special care to use it sparingly”).

Based on these standards, this Court should undertake an analysis of the admissibility of the evidence listed above with an eye toward granting the State's request to present said evidence.

III. DEFENDANT'S STATEMENT THAT HE "HAS BEEN SELLING MARIJUANA"

Defendant's statement that he "has been selling marijuana" is relevant to a non-propensity purpose in the present case and the probative value of the evidence outweighs any prejudice that might result from its admission. Specifically, it is relevant evidence of his intent at the time that he possessed the marijuana in question.

Defendant is charged with Possession of a Controlled Substance with the Intent to Deliver. To prove the charge, the State is required to show that he knowingly possessed the marijuana in question and that he intended to deliver the controlled substance. The fact that Defendant "has been selling marijuana" is evidence of his intent at the time that he purchased and possessed the marijuana that is the basis of the instant charge. Specifically, it is evidence that he intended to sell, distribute, or otherwise deliver the marijuana that he had just purchased.

Case law from Idaho and other jurisdictions supports the admission of Defendant's statement for the purpose of proving his intent at the time that he possessed the more than two hundred grams of marijuana in question. One such case is *State v. Gauna*, 117 Idaho 83 (Id. Ct. App. 1989). In *Gauna*, the appellant/defendant was convicted of possession of a controlled substance with the intent to deliver—the same charge filed in the instant case. During trial, the court allowed a witness to testify that she

had previously purchased approximately twenty pounds of marijuana from Gauna. The admission of that evidence was one of Gauna's complaints on appeal. In upholding the admission of the other act evidence, the Idaho Court of Appeals wrote:

We believe the testimony was admissible under the intent exception to I.R.E. 404(b). Gauna's theory of defense at trial was that the marijuana belonged to a woman who was at his residence at the time of the arrest. Thus, the state and Gauna disagreed not only on whether Gauna possessed the drugs but also, implicitly, on whether he intended to deliver them. Consequently, intent was a material and disputed issue. Evidence of prior marijuana transactions was clearly relevant to show intent to deliver because it increased the likelihood that the marijuana seized in this case was awaiting sale rather than personal use.

Id. at 87. Similarly, in the present case the State is required to show that Defendant Morris possessed the marijuana in question with the intent to deliver it. As such, his statement that he had been selling marijuana is relevant to his intent similar to that in *Gauna*. The Idaho Court of Appeals also examined the trial court's determination that the probative value of the other act evidence outweighed the danger of unfair prejudice. In doing so it wrote:

All probative evidence is, to some extent, prejudicial. The question is whether that prejudice is unfair—that is, whether it harms the defendant not because of inferences which reasonably can be drawn from the facts, but because it inflames the jury and rouses them to “overmastering hostility.” We do not believe that to be the case here. While the witness' testimony certainly bolstered the likelihood that Gauna possessed drugs for reasons other than personal use, we do not believe it was so inflammatory that it would lead a jury to convict Gauna regardless of other facts presented. Therefore, we conclude that its probative value outweighed any unfair prejudice. The trial judge did not err in admitting the evidence.

Id. at 88. *See also State v. Canelo*, 129 Idaho 386, 394 (Id. Ct. App. 1996) (holding that an uncharged drug transaction “was relevant to prove [defendant/appellant's] motive or intent.”).

Case law from the federal courts support the admission of Defendant's statements as evidence of intent as well. For example, in *United States v. Vo*, 413 F.3d 1010 (9th Cir. 2005), the Ninth Circuit Court of appeals noted:

We have consistently held that evidence of a defendant's prior possession or sale of narcotics is relevant under Rule 404(b) to issues of intent, knowledge, motive, opportunity, and absence of mistake or accident in prosecutions for possession of, importation of, and intent to distribute narcotics.

Id. at 1018 (quoting *United States v. Mehrmanesh*, 689 F.2d 822, 832 (9th Cir.1982)).

See also *United States v. Hodge*, 354 F.3d 305, 312 (4th Cir. 2004) (“[T]he evidence of Hodge’s 1996 drug transactions was relevant and necessary in that it tended to show the existence of a continuing narcotics business and therefore to show Hodge’s knowledge of the drug trade and his intent to distribute the cocaine found in his Jeep.”); *United States v. Clarke*, 24 F.3d 257, 265 (D.C. Cir. 1994) (“Here, the jury could reasonably conclude that because the defendants had sold cocaine in the past, the cocaine they had in their possession on December 17 was meant to be sold, rather than, for example, hoarded for their personal use. . . . In all of these considerations, character is not what was relevant. Rather, the relevance was based on the common sense notion that people who had previously worked in concert with the intent to sell drugs were probably not intending to save a cache of drugs for their personal use.”); and *United States v. Rodriguez*, 882 F.2d 1059, 1064-65 (6th Cir. 1989) (“We hold that the evidence regarding the November 24, 1987, transaction was relevant and admissible under Rule 404(b) as showing intent, plan, and knowledge. The government argued in this case that defendant and Hernandez were involved in distributing cocaine. This argument was supported by the evidence that on

two separate occasions . . . Hernandez traveled to defendant's home, at least inferably to obtain the cocaine which would then be resold to others. To make out the elements of its indictment, the government was required to show that defendant possessed cocaine with the intent to distribute it. Thus, the evidence relating to the November 24, 1987, transaction was properly admitted by the district court as probative of defendant's criminal intent to distribute cocaine.").

For these reasons the State requests that the proposed evidence be admitted to show Defendant's intent to deliver the marijuana found in his possession.

IV. CO-DEFENDANT PHILLIPS' STATEMENT THAT SHE CANNOT DEAL WITH DEFENDANT MORRIS' MARIJUANA SOURCE WITHOUT DEFENDANT

During a conversation with Detective Christensen, co-defendant Phillips admitted that she knew the person from whom Morris had just purchased the marijuana that was in their possession, but that she "cannot deal with him directly without Morris." This statement potentially implies that Morris has a prior connection with his source for the marijuana that Morris possessed with the intent to deliver. It further suggests that Morris has been involved in selling drugs in the past. As such, the statement potentially implicates I.R.E. 404(b) and the State hereby provides notice of an intent to inquire about the substance of that statement should co-defendant Phillips testify on Defendant Morris' behalf at trial.

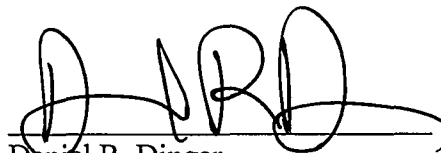
In terms of the analysis regarding admissibility under I.R.E. 404(b), the analysis is the same as that discussed above, and on those grounds the State requests that the

evidence be deemed admissible for the purpose of proving intent should co-defendant Phillips be called to testify.

The State requests a hearing on this matter.

DATED this 5th day of February 2013.

GREG H. BOWER
Ada County Prosecuting Attorney



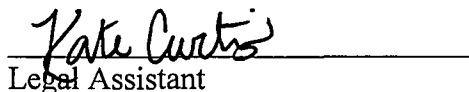
Daniel R. Dinger
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10 day of February 2013, I caused to be served, a true and correct copy of the foregoing Notice of Intent to Present I.R.E. 404(b) Evidence of Defendant's Prior Sales of Marijuana upon the individual(s) named below in the manner noted:

Name and address: Jonathan Loschi, Ada County Public Defender, 200 W. Front Street, Rm. 1107, Boise, Idaho 83702

- ☐ By depositing copies of the same in the Interdepartmental Mail.



Legal Assistant

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NO. _____ FILED _____
A.M. 10 P.M. _____

FEB - 8 2013

CHRISTOPHER D. RICH, Clerk
By **ELAINE TONG**
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

Daniel R. Dinger
Deputy Prosecuting Attorney
200 West Front Street, Room 3191
Boise, ID 83702
Telephone: (208) 287-7700

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,

Plaintiff,

vs.

RICHARD GLENN MORRIS,

Defendant.


Case No. CR-FE-2012-0013672

NOTICE OF HEARING

TO: Jonathan D. Loschi, Ada County Public Defender, his Attorney of Record, you will please take notice that on the 1st day of March 2013, at the hour of 3:30 p.m. of said day, or as soon thereafter as counsel can be heard, Deputy Prosecuting Attorney Daniel R. Dinger, will move this Honorable Court regarding the State's Notice of Intent to Present 404(b) Evidence and the Pretrial Conference that was previously scheduled for 11:00 a.m. in the above-entitled action.

DATED this 6th day of February 2013.

GREG H. BOWER
Ada County Prosecuting Attorney


By: Daniel R. Dinger
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7 day of February 2013, I caused to be served, a true and correct copy of the foregoing Notice of Hearing upon the individual(s) named below in the manner noted:

Name and address: Jonathan D. Loschi, Ada County Public Defender, 200 W. Front Street, Rm. 1107, Boise, Idaho 83702

☒ By depositing copies of the same in the Interdepartmental Mail.

Kate Curtis
Legal Assistant

FEB 13 2013

CHRISTOPHER D. RICH, Clerk
By MAURA OLSON
DEPUTY

ADA COUNTY PUBLIC DEFENDER
Attorney for Defendant

Jonathan Loschi
Deputy Public Defender
200 West Front Street, Suite 1107
Boise, Idaho 83702
Telephone: (208) 287-7400
Facsimile: (208) 287-7409

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff,

vs.

RICHARD GLENN MORRIS,


Defendant.

Case No. CR-FE-2012-0013672

**DEFENDANT'S SECOND DISCOVERY
RESPONSE TO COURT**

COMES NOW the defendant, RICHARD GLENN MORRIS, by and through his attorney, Jonathan Loschi, Ada County Public Defender's Office, and informs the Court that the Defendant has complied with the State's Request for Discovery by delivering Defendant's Addendum to Discovery to Daniel Dinger, Deputy Prosecuting Attorney for Ada County, State of Idaho.

Dated this 12th day of February 2013.

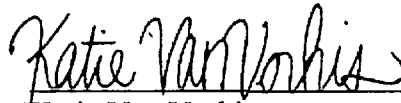


JONATHAN LOSCHI
Attorney for Defendant

CERTIFICATE OF MAILING

I HEREBY CERTIFY, that on this 12th day of February 2013, I mailed (served) a true and correct copy of the within instrument to:

Daniel Dinger
Ada County Prosecutor's Office
Interdepartmental Mail



Katie Van Vorhis

<u>Time</u>	<u>Speaker</u>	<u>Note</u>
<u>3:20:12 PM</u>	Case Called	State v. Richard Morris FE-12-13672 C 404 (b)PD
<u>3:20:22 PM</u>	States Attorney	Dan Dinger
<u>3:20:25 PM</u>	Defense Attorney	Jon Loschi
<u>3:20:55 PM</u>	Defense Attorney	Propose setting JT for 4/22/13
<u>3:22:08 PM</u>	States Attorney	Discussion about State Witness
<u>3:24:14 PM</u>	Judge	Reset JT date for 4/22/13 @ 8:30 am
<u>3:25:45 PM</u>		Set for Hearing on Motion for Leave to present Testimony 3/21/13 @ 3:30 pm
<u>3:27:07 PM</u>	Defense Attorney	Parties Agree to certian facts
<u>3:30:17 PM</u>	States Attorney	Will Prepare Order Pe-Trial Order
<u>3:33:16 PM</u>		End of Case
<u>3:33:16 PM</u>		

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3:30

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A.M. _____ FILED P.M. 12:40

MAR - 6 2013

CHRISTOPHER D. RICH, Clerk
By ELAINE TONG
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

Daniel R. Dinger
Deputy Prosecuting Attorney
200 W. Front Street, Room 3191
Boise, Id. 83702
Telephone: (208) 287-7700

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,)

Plaintiff,)

Case No. CR-FE-2012-0013672

vs.)

NOTICE OF HEARING

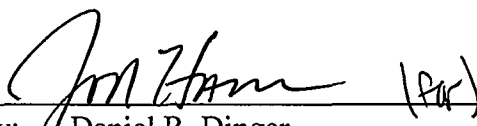
RICHARD GLENN MORRIS,)

Defendant.)

TO: Jonathan Loschi, Attorney of Record, you will please take notice that on the 21st day of March, 2013 at 3:30 of said day, or as soon thereafter as counsel can be heard, Deputy Prosecuting Attorney Daniel R. Dinger will move this Honorable Court regarding the State's Motion for Leave to Present Testimony to Clarify the Record, in the above-entitled action.

DATED this 5th day of March, 2013.

GREG H. BOWER
Ada County Prosecuting Attorney

By:  (Per)
Daniel R. Dinger
Deputy Prosecuting Attorney

✓

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 5th day of March, 2013, I caused to be served, a true and correct copy of the foregoing Notice of Hearing upon the individual(s) named below in the manner noted:

Name and address: Jonathan Loschi, Ada County Public Defender, 200 W. Front Street, Rm. 1107, Boise, Idaho 83702

- ☐ By depositing copies of the same in the United States mail, postage prepaid, first class.
- ☒ By depositing copies of the same in the Interdepartmental Mail.
- ☐ By informing the office of said individual(s) that said copies were available for pickup at the Office of the Ada County Prosecutor.
- ☐ By faxing copies of the same to said attorney(s) at the facsimile number:



Legal Assistant

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3/21
3:40

ADA COUNTY PUBLIC DEFENDER
Attorney for Defendant
200 West Front Street
Boise, Idaho 83702
Telephone: (208) 287-7400
Facsimile: (208) 287-7409

NO. _____
A.M. _____ FILED _____ P.M. _____

MAR 18 2013

CHRISTOPHER D. RICH, Clerk
By KATRINA CHRISTENSEN
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,)
)
Plaintiff,)
)
vs.) Criminal No. CR FE 12 13672
)
RICHARD GLENN MORRIS,) OBJECTION TO STATE'S MOTION
) TO CLARIFY RECORD
)
Defendant.)
)
)
)
)

COMES NOW, the above named defendant, RICHARD MORRIS, by and through his attorney of record, the Ada County Public Defender's Office, JONATHAN D. LOSCHI, handling attorney, and submits this Objection to the State's Motion for Leave to Present Testimony to Clarify the Record.

FACTS

Attorney for the defendant filed a Motion to Suppress and Brief in Support of that motion on or about November 8, 2012. The State filed a written objection on November 20, 2012. On December 11, 2012, the defense filed a discovery response with an attached copy of the defendant's Probation Supervision Notes. This included the entry that the State refers to in their Motion to Clarify Record. A hearing on the Motion to Suppress was held on December 14, 2012. An Order Denying Motion to Suppress was issued by this court on December 20, 2012.

The State moves this court to reopen the hearing to allow further testimony to "clarify the record" that they admit has no bearing on the ultimate decision on the motion to suppress.

ARGUMENT

The state offers no statute or case law in support of its motion to reopen the suppression hearing to clarify issues that are not dispositive of the motion to suppress. The appellate courts of Idaho will examine a court's refusal to reopen a suppression hearing from an abuse of discretion standard. State v. Babb, 125 Idaho 934, 877 P.2d 905 (1994). The defendant in Babb sought to reopen a suppression hearing based on new information that came out during trial. The trial court denied that request. The Idaho Supreme Court upheld the ruling as an acceptable exercise of discretion. Id. at 912. The Supreme Court found that the "new evidence" did not contradict the testimony of the officer at the hearing. Id. Also, the "new evidence" was available to the defendant since he participated in the interview that was the basis of the motion to reopen. Id.

In evaluating such decision, an appellate court will conduct a three-tiered inquiry. State v. Hedger, 115 Idaho 598, 768 P.2d 1331 (1989). First, whether the lower court rightly perceived this issue as one of discretion. Id. at 600. Second, whether the court acted within the outer boundaries of such discretion and consistently with any legal standards applicable to specific choices. Id. Third, whether the court reached its decision by an exercise of reason. Id.

Pursuant to Babb, this is a discretionary decision with the court. The state is moving the court here to do what the defendant moved the trial court in Babb to do.

Consistent with Babb, the proffered new testimony ought to be examined for its relationship to the ultimate decision. In other words, the Babb court found that the "new testimony" would not contradict the testimony of the officer. Implicit in that

finding is the recognition that the "new testimony" would not change the outcome. Here, the "new testimony" would impeach, to a degree, what Stacie Lockner testified to at the suppression hearing but this court denied the motion to suppress in spite of Lockner's testimony that contradicted Officer Cromwell's testimony. The state seeks now to bolster Officer Cromwell's testimony. No new outcome would result from that. Also, similar to Babb, this information was available to the state all along. It was the defense that subpoenaed the Probation Supervision notes and provided them to the State. It was the defense that subpoenaed Stacie Lockner for the hearing. Yet, both the notes and Lockner were equally available to the State.

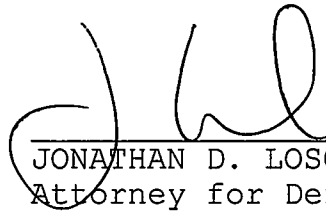
In making its decision, this court ought to apply a standard that looks at whether this is new information not previously available to the State, and whether it would affect the outcome. Neither instance applies here. The State cites a need to get the "complete record" for an appellate court to examine. The record as it exists of the suppression hearing held in this case is complete and accurate as to what transpired at that hearing. If the state were to lose a suppression hearing because it did not call a necessary witness, that decision would be final. They would not be allowed to reopen the hearing to "get it right" and that suppression decision would be as final as any other, and the record as complete as of any other hearing.

Stacie Lockner is available to testify at trial. The state will have the opportunity to attempt to clarify the underlying events of this traffic stop at that time.

CONCLUSION

Based on the foregoing, the Defendant respectfully requests that the court to deny the state's motion.

Dated this 18 day of March, 2013.



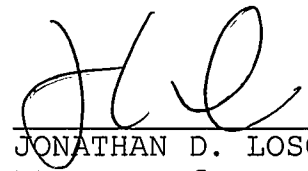
JONATHAN D. LOSCHI
Attorney for Defendant

CERTIFICATE OF MAILING

I HEREBY CERTIFY, that on this 18 day of March, 2013, I
mailed a true and correct copy of the foregoing to the:

Ada County Prosecutor

By depositing the same in interdepartmental mail.



JONATHAN D. LOSCHI
Attorney for Defendant

MAR 21 2013

CHRISTOPHER D. RICH, Clerk
By CINDY HO
DEPUTY

GREG H. BOWER

Ada County Prosecuting Attorney

Daniel R. Dinger

Deputy Prosecuting Attorney

200 W. Front Street, Room 3191

Boise, Idaho 83702

Telephone: (208) 287-7700

Facsimile: (208) 287-7709

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,

Plaintiff,

vs.

RICHARD GLENN MORRIS,

Defendant,

Case No. CR-FE-2012-0013672

**ORDER REGARDING
EVIDENTIARY ISSUES FOR
TRIAL**

The parties have stipulated to the following presentation of evidence at trial and the Court finds the stipulation is appropriate; therefore,

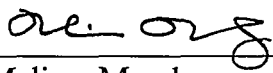
IT IS ORDERED that:

1. the State may admit evidence of Defendant's admission to selling marijuana prior to August 1, 2012, as reflected in police reports for the limited purpose of proving intent pursuant to I.R.E. 404(b);

2. the State may impeach Crystal Phillips with her statement to law enforcement that, without Defendant being present, she cannot purchase marijuana from the source of the marijuana that is the basis of Defendant's current charge;
3. either party may refer to the Defendant being on "probation" during the time of the charged offense; however, the prosecuting attorney may make no reference to nor permit his witnesses to refer to the fact that Defendant was on FELONY probation. The prosecuting attorney is to inform all witnesses who may inadvertently testify regarding the "felony" nature of the probation about this Court's prohibition on that testimony.

IT IS SO ORDERED

DATED this 21st day of March 2013.



Melissa Moody
District Court Judge

<u>Time</u>	<u>Speaker</u>	<u>Note</u>
<u>3:28:49 PM</u>	Case Called	Richard Morris FE-12-13672 In-Custody Crystal Phillips FE-12-12803 On Bond
<u>3:29:07 PM</u>	States Attorney	DanDinger
<u>3:29:08 PM</u>	Defense Attorney	Jon Loschi for Richard Morris Layne Davis For Crystal Phillips
<u>3:29:33 PM</u>	States Attorney	Argue Motion
<u>3:37:45 PM</u>	Defense Attorney	Jon Loschi Response
<u>3:40:17 PM</u>	Judge	Question
<u>3:42:08 PM</u>	Defense Attorney	Layne Davis -No Argument
<u>3:42:44 PM</u>	Judge	Deny Motion
<u>3:44:59 PM</u>	States Attorney	Question
<u>3:46:15 PM</u>	Judge	Deny motion to allow testimony to preserve appeal issues

NO. _____
A.M. _____ P.M. 3:16

MAR 22 2013

CHRISTOPHER D. PICH, Clerk
By SHARPY ABBOTT
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff,

vs.

RICHARD GLENN MORRIS,

Defendant.

Case No. CRFE-2012-13672

ORDER DENYING MOTION TO
PRESENT TESTIMONY TO CLARIFY
RECORD

On February 28, 2013, the State filed, under seal, a Motion for Leave to Present Testimony to Clarify the Record. On March 18, 2013, Defendant Morris filed, through counsel, an objection to State's Motion to Clarify the Record.¹ Argument was heard on March 21, 2013.

Based upon its review of the pleadings and the arguments heard on March 21, 2013, the Court DENIES the motion to present testimony to clarify the record. This is a

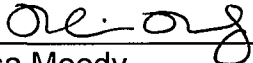
¹ Co-defendant Phillips did not file an opposition and though she was present, with counsel, at the March 21, 2013 hearing on the motion, Co-defendant Phillips specifically took no position on the State's motion.



matter committed to the discretion of the Court. Because additional testimony will not change the Court's decision denying Defendant's motion to suppress, the Court denies the motion to present additional testimony.

IT IS SO ORDERED.

DATED this 22nd day of March 2013.



Melissa Moody
District Judge

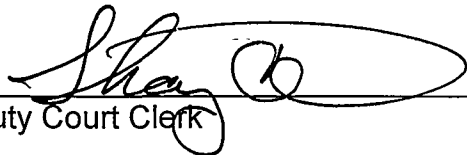
CERTIFICATE OF MAILING

I hereby certify that on this 25th day of March 2013, I mailed (served) a true and correct copy of the within instrument to:

Daniel Dinger
Deputy Ada County Prosecutor
Interdepartmental Mail

Jonathan Loschi
Deputy Ada County Public Defender
Interdepartmental Mail

CHRISTOPHER D. RICH
Clerk of the District Court

By: 
Deputy Court Clerk

122
JT
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\$125

NO. 10 FILED
A.M. _____ P.M. _____

MAR 25 2013

CHRISTOPHER D. FICH, Clerk
By KATRINA CHRISTENSEN
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

Daniel R. Dinger
Deputy Prosecuting Attorney
200 West Front Street, Room 3191
Boise, Idaho 83702
Telephone: (208) 287-7700

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,)
)
Plaintiff,)
)
vs.)
)
RICHARD GLENN MORRIS,)
)
Defendant.)
_____)

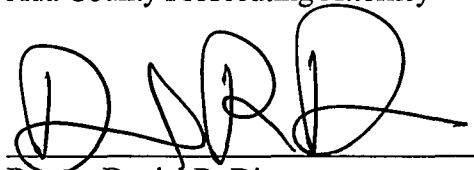
Case No. CR-FE-2012-0013672

**MOTION FOR PREPARATION
OF TRANSCRIPT**

COMES NOW, Daniel R. Dinger, Ada County Deputy Prosecuting Attorney, and moves this Court for an order for preparation of a transcript of the hearing that occurred on the 21st day of March, 2013.

DATED this 22nd day of March, 2013.

GREG H. BOWER
Ada County Prosecuting Attorney



By: Daniel R. Dinger
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of March 2013, I caused to be served, a true and correct copy of the foregoing Response to Discovery upon the individual(s) named below in the manner noted:

Jonathan Loschi, Ada County Public Defender, 200 W. Front Street, Rm. 1107, Boise, Idaho 83702

- ☐ By depositing copies of the same in the United States mail, postage prepaid, first class.
- ☒ By depositing copies of the same in the Interdepartmental Mail.
- ☐ By hand delivering copies of the same to defense counsel.
- ☐ By informing the office of said individual(s) that said copies were available for pickup at the Office of the Ada County Prosecutor.
- ☐ By faxing copies of the same to said attorney(s) at the facsimile number: _____



Legal Assistant

MAR 25 2013

CHRISTOPHER D. RICH, Clerk
By CINDY HO
DEPUTY

RECEIVED
MAR 25 2013
Ada County Clerk:

GREG H. BOWER
Ada County Prosecuting Attorney

Daniel R. Dinger
Deputy Prosecuting Attorney
200 West Front Street, Room 3191
Boise, Idaho 83702
Telephone: (208) 287-7700

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,)

Plaintiff,)

vs.)

RICHARD GLENN MORRIS,)

Defendant.)
_____)

Case No. CR-FE-2012-0013672

**ORDER FOR PREPARATION
OF TRANSCRIPT**

Upon motion of the State, and good cause being shown;

IT IS HEREBY ORDERED that a transcript of the hearing conducted on the 21st day of March, 2013, be prepared. The Transcription Department and/or Court Reporter is authorized to prepare and deliver to the Court an original and a copy to the Ada County Prosecuting Attorney.

DATED this 25 day of March, 2013.

Dei. org
District Court Judge *Moody*

ORDER FOR PREPARATION OF TRANSCRIPT
(MORRIS), Page 1

000152


PHD
cc: AC / PD / Mica / Transcripts

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on this 29th day of March, 2013, I caused to be served, a true and correct copy of the foregoing Notice of Hearing upon the individual(s) named below in the manner noted:

Name and address: Jonathan Loschi, Ada County Public Defender, 200 W. Front Street, Rm. 1107, Boise, Idaho 83702

- ☐ By depositing copies of the same in the United States mail, postage prepaid, first class.
- ☒ By depositing copies of the same in the Interdepartmental Mail.
- ☐ By informing the office of said individual(s) that said copies were available for pickup at the Office of the Ada County Prosecutor.
- ☐ By faxing copies of the same to said attorney(s) at the facsimile number: _____



Legal Assistant

NO. _____
A.M. 9:57 P.M. _____

APR - 3 2013

CHRISTOPHER D. RICH, Clerk
S. CHARITY ABBOTT
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff,

vs.

RICHARD GLENN MORRIS,

Defendant.

Case No. CRFE-2012-13672

ORDER LIMITING
QUESTIONING AT TRIAL

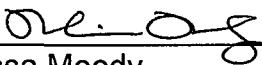
Based upon the stipulation of the parties, the Court hereby orders that the presentation of evidence at trial will be limited as follows:

1. The defendant may not ask any questions pertaining to the filing of a complaint with the ombudsman. (This limitation is void if the State raises this issue in its questioning.)
2. The defendant may not ask any questions regarding the Court's order denying the motion to suppress evidence. (This limitation is void if the State raises this issue in its questioning.)
3. The defendant may not ask any questions regarding the Court's denial of the State's motion to supplement the record. (This limitation is void if the State raises this issue in its questioning.)

Both parties may question regarding the testimony offered at the suppression hearing. This questioning must take the form of asking a witness specifically: "You previously testified in this matter ... to 'x'?" All other questioning, or unsolicited testimony, regarding prior testimony at the suppression hearing or any of the above matters (#1-3), is prohibited. Counsel are responsible for ensuring that the witnesses are aware of the Court's order.

IT IS SO ORDERED.

DATED this 2nd day of April 2013.



Melissa Moody
District Judge

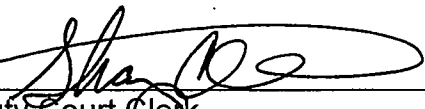
CERTIFICATE OF MAILING

I hereby certify that on this 3rd day of April 2013, I mailed (served) a true and correct copy of the within instrument to:

Jonathan Loschi
Deputy Ada County Public Defender
Interdepartmental Mail

Daniel Dinger
Deputy Ada County Prosecutor
Interdepartmental Mail

CHRISTOPHER D. RICH
Clerk of the District Court

By: 
Deputy Court Clerk

Time	Speaker	Note
<u>8:42:29 AM</u>		St. v. Richard Glenn Morris CRFE2012-13672 Jury Trial Day One
<u>9:26:49 AM</u>	Defendant	is present, in custody.
<u>9:26:55 AM</u>	State Attorney - Dan Dinger	
<u>9:26:59 AM</u>	Public Defender - Jonathan Loschi	
<u>9:27:07 AM</u>		The Jury Panel is present.
<u>9:27:42 AM</u>		SIDE BAR
<u>9:30:33 AM</u>	Judge McKee	excuses Juror's 41 through 59.
<u>9:31:14 AM</u>	Judge McKee	comments
<u>9:32:07 AM</u>	Clerk	swears in the Jury Panel.
<u>9:32:17 AM</u>	Judge McKee	begins Introductory Instructions.
<u>9:35:59 AM</u>	Judge McKee	begins voir dire examination.
<u>9:51:46 AM</u>	Judge McKee	questions Juror #21 and excuses Juror #21.
<u>9:52:39 AM</u>	Judge McKee	questions Juror #20 and excuses Juror #20.
<u>9:53:51 AM</u>	Judge McKee	continues voir dire examination.
<u>9:55:16 AM</u>	State Attorney -	begins voir dire examination.
<u>10:01:29 AM</u>	State Attorney -	moves to excuse Juror #3
<u>10:01:38 AM</u>	Judge McKee	questions Juror #3 and excuses Juror #3.
<u>10:02:53 AM</u>	State Attorney -	continues voir dire examination.
<u>10:06:30 AM</u>	Judge McKee	comments to the Jury Panel.
<u>10:07:45 AM</u>	State Attorney -	continues voir dire examination.
<u>10:26:48 AM</u>	Judge McKee	comments to the Jury Panel and admonishes them for recess.
<u>10:28:59 AM</u>		Court in recess.
<u>10:52:17 AM</u>		Court reconvenes. The Jury Panel is present.
<u>10:52:23 AM</u>	Public Defender -	begins voir dire examination.
<u>11:06:12 AM</u>		SIDE BAR
<u>11:06:12 AM</u>	Public Defender -	continues voir dire examination.
<u>11:14:22 AM</u>	Judge McKee	comments to the Jury Panel.
<u>11:14:57 AM</u>		Peremptory Challenges begin.
<u>11:26:53 AM</u>	Judge McKee	seats the final Jury Panel.
<u>11:28:53 AM</u>	Judge McKee	thanks and excuses the remaining Jurors.
<u>11:30:27 AM</u>	Judge McKee	comments to the Jury Panel.
<u>11:30:49 AM</u>	Clerk	swears in the final Jury Panel.
<u>11:30:58 AM</u>	Judge McKee	comments to the Jury Panel.

<u>11:38:41 AM</u>	Judge McKee	reads the opening Jury Instructions to the Jury.
<u>11:58:39 AM</u>	State Attorney -	makes opening statement.
<u>12:04:05 PM</u>	Public Defender -	makes opening statement.
<u>12:09:12 PM</u>	State Attorney -	calls his first witness.
<u>12:09:38 PM</u>	Witness - Jim Cromwell	is sworn by the Clerk.
<u>12:10:12 PM</u>	State Attorney -	begins direct examination.
<u>12:16:57 PM</u>	Judge McKee	admonishes the Jury for recess.
<u>12:17:16 PM</u>		Court in recess.
<u>12:17:23 PM</u>		Court reconvenes. Jury is present.
<u>12:44:31 PM</u>	Judge Norton	comments.
<u>12:44:33 PM</u>	State Attorney -	continues direct examination.
<u>12:44:56 PM</u>		Exhibit 1, previously marked, is identified and offered.
<u>12:45:37 PM</u>	Public Defender -	has no objection.
<u>12:45:41 PM</u>	Judge McKee	admits Exhibit 1.
<u>12:46:15 PM</u>	State Attorney -	continues direct examination.
<u>12:47:42 PM</u>	Judge McKee	questions the witness.
<u>12:48:08 PM</u>	State Attorney -	continues direct examination.
<u>1:03:58 PM</u>	Public Defender -	begins cross examination.
<u>1:32:51 PM</u>		SIDE BAR
<u>1:33:18 PM</u>	State Attorney -	begins re-direct examination.
<u>1:36:07 PM</u>		SIDE BAR
<u>1:36:07 PM</u>	State Attorney -	continues re-direct examination.
<u>1:38:00 PM</u>	Witness - Jim Cromwell	steps down.
<u>1:38:06 PM</u>	State Attorney -	calls his next witness.
<u>1:38:37 PM</u>	Witness - Marshall Plaisted	is sworn by the Clerk.
<u>1:39:21 PM</u>	State Attorney -	begins direct examination.
<u>1:47:41 PM</u>	Public Defender -	objects, calls for conclusion and non-responsive.
<u>1:48:09 PM</u>	Judge McKee	advises it is beyond his questioning.
<u>1:48:18 PM</u>	State Attorney -	continues direct examination.
<u>1:48:35 PM</u>	Public Defender -	has same objection.
<u>1:48:42 PM</u>	Judge McKee	comments.
<u>1:48:44 PM</u>	State Attorney -	continues direct examination.
<u>1:48:52 PM</u>	Public Defender -	objects, foundation.
<u>1:49:03 PM</u>		SIDE BAR
<u>1:49:03 PM</u>	Judge McKee	sustains the objection on foundation.
<u>1:49:53 PM</u>	State Attorney -	continues direct examination.
<u>1:54:20 PM</u>	Public Defender -	begins cross examination.

<u>2:00:36 PM</u>	Witness - Marshall Plaisted	steps down.
<u>2:00:47 PM</u>	Judge McKee	comments to the Jury and admonishes them for recess until tomorrow morning at 9:00 a.m.
<u>2:02:11 PM</u>	Judge McKee	comments regarding a note that the Bailiff passed to the Court.
<u>2:02:23 PM</u>	Public Defender -	does not need to talk about it.
<u>2:02:30 PM</u>	State Attorney -	does not need to either.
<u>2:02:35 PM</u>	Public Defender -	advises the co-def does not want to testify tomorrow.
<u>2:02:53 PM</u>	Judge McKee	comments.
<u>2:03:47 PM</u>	State Attorney -	comments.
<u>2:03:55 PM</u>	Judge McKee	comments.
<u>2:04:18 PM</u>		Court in recess until tomorrow morning at 9:00 a.m.
<u>2:04:31 PM</u>		

<u>Time</u>	<u>Speaker</u>	<u>Note</u>
<u>8:05:31 AM</u>		State v. Richard Morris FE-12-13672 "C" Day 2 Jury Trial
<u>8:05:31 AM</u>	States Attorney	Dan Dinger
<u>8:05:31 AM</u>	Defense Attorney	Jon Loschi
<u>9:02:09 AM</u>		Jury Present/Seated
<u>9:02:17 AM</u>	States Attorney	Calls SW #3
<u>9:02:40 AM</u>	States Attorney	DX SW#3 Officer Perry Markle/Sworn
<u>9:10:08 AM</u>		Moves to mark SE #2
<u>9:11:13 AM</u>	States Attorney	Moves to Admit SE #2
<u>9:11:18 AM</u>	Defense Attorney	No Objection
<u>9:11:19 AM</u>	Judge	So Admits SE #2
<u>9:11:29 AM</u>		sidebar
<u>9:14:09 AM</u>	Defense Attorney	CX SW #3
<u>9:29:43 AM</u>	States Attorney	No RDX
<u>9:29:46 AM</u>	Judge	SW #3 Step Down
<u>9:30:09 AM</u>	States Attorney	Calls SW #4 Kerry Russell/Sworn
<u>9:31:08 AM</u>	States Attorney	DX SW #4
<u>9:40:22 AM</u>	States Attorney	Moves to Publish SE #2 to Jury
<u>9:40:28 AM</u>	Judge	So Orders
<u>9:40:33 AM</u>	Defense Attorney	CX SW #4
<u>9:42:05 AM</u>	States Attorney	No CX
<u>9:42:08 AM</u>	Judge	SW #4 Excused
<u>9:43:32 AM</u>	Break	Jury Excused
<u>9:52:22 AM</u>	On Record	Jury Present/Seated
<u>9:52:24 AM</u>	States Attorney	Calls SW #5 Detective Clay Christensen
<u>9:52:43 AM</u>	States Attorney	DX SW #5
<u>9:59:36 AM</u>	States Attorney	Moves SW #5 to review forms to refresh recollection
<u>10:13:44 AM</u>	Defense Attorney	CX SW #5

<u>10:39:33 AM</u>	States Attorney	RDX SW #5
<u>10:40:56 AM</u>	States Attorney	Moves to refresh SW #5 recollection
<u>10:42:45 AM</u>	Defense Attorney	RCX SW #5
<u>10:44:19 AM</u>	Judge	SW #5
<u>10:44:24 AM</u>	States Attorney	Rest Case
<u>10:44:49 AM</u>	Break	
<u>10:46:27 AM</u>	Judge	Expexted Time Remaining for Trial Discussed
<u>10:49:04 AM</u>	Judge	Advise Defendant of Rights to testify or not
<u>10:51:40 AM</u>	Judge	Jury Instruction Discusssion
<u>10:54:15 AM</u>	Break	
<u>10:54:21 AM</u>	Defense Attorney	Calls DW #1 Crystal Phillips/Sworn
<u>11:21:22 AM</u>	Defense Attorney	DX DW #1
<u>12:06:04 PM</u>	Break	
<u>12:06:51 PM</u>	On Record	Jury Present/Seated
<u>12:29:47 PM</u>	States Attorney	CX DW #1
<u>12:34:04 PM</u>	States Attorney	Moves to refresh witnesses recollection
<u>12:35:31 PM</u>	Defense Attorney	Objection
<u>12:35:35 PM</u>	States Attorney	Rephrase
<u>12:36:32 PM</u>	Defense Attorney	RDX DW #1
<u>12:39:33 PM</u>	States Attorney	No RCX
<u>12:39:38 PM</u>	Judge	Excuse DW #1
<u>12:39:48 PM</u>	Defense Attorney	Moves to Excuse Jury for Motion
<u>12:40:00 PM</u>	Judge	So Orders Jury Excused
<u>12:40:28 PM</u>	Defense Attorney	Calls DW #2 Richard Morris
<u>12:42:14 PM</u>		Jury Present/Seated
<u>12:42:38 PM</u>		DW #2 Richard Morris/Sworn
<u>12:42:53 PM</u>	Defense Attorney	DX DW #2
<u>1:17:19 PM</u>	States Attorney	CX DW #2
<u>1:21:55 PM</u>	Defense Attorney	RDX DW #2

<u>1:23:05 PM</u>	Break	Jury Excused
<u>1:23:49 PM</u>	States Attorney	Rebuttle Discussion
<u>1:25:20 PM</u>	Defense Attorney	Response not proper rebuttle
<u>1:26:29 PM</u>	Judge	Allow rebuttle witness
<u>1:26:50 PM</u>	Defense Attorney	Stipulate to Audio Recording
<u>1:26:58 PM</u>	Judge	Admit SE #3 (CD of Telephone Recording)
<u>1:27:55 PM</u>	Break	
<u>1:28:02 PM</u>	On Record	CT Offer Proposed Jury Instructions
<u>1:31:17 PM</u>	States Attorney	Agrees to Instructions
<u>1:31:26 PM</u>	Defense Attorney	Agrees to Instructions
<u>1:31:43 PM</u>		Jury Present/Seated
<u>1:33:25 PM</u>	Judge	Allow Publish of SE #3
<u>1:35:15 PM</u>		Parties Rest
<u>1:35:25 PM</u>	Judge	Closing Instructions to Jury
<u>1:47:14 PM</u>	States Attorney	Closing Argument
<u>1:59:24 PM</u>	Defense Attorney	Closing Argument
<u>2:17:20 PM</u>	States Attorney	Rebuttle Closing
<u>2:22:38 PM</u>		Bailfiff Sworn
<u>2:23:34 PM</u>		alternate Chosen
<u>2:23:39 PM</u>		sidebar on instructions
<u>2:25:15 PM</u>		Jury Excused for Deliberations
<u>2:25:55 PM</u>	On Record	
<u>5:31:12 PM</u>		Jury Present/Seated
<u>5:31:28 PM</u>	Judge	Review Verdict
<u>5:31:35 PM</u>		Verdict Read Into Record (Defendant Found Guilty of Possession-Lesser Included)
<u>5:32:26 PM</u>	Parties	No Polling Requested
<u>5:32:36 PM</u>	Judge	Release Jury with Closing Instructions
<u>5:34:33 PM</u>		Jury Excused
<u>5:36:16 PM</u>		May 3 @ 9:00 for Disposition
<u>5:36:50 PM</u>	Judge	Release Defendant R.O.R. on this case
<u>5:37:25 PM</u>		End of Case
<u>5:37:25 PM</u>		
<u>5:37:25 PM</u>		

APR 23 2013

CHRISTOPHER D. RICH, Clerk
By CINDY HO
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff,

vs.

RICHARD GLENN MORRIS,

Defendant.

Case No. CR-FE-2012-0013672

JURY INSTRUCTIONS

THE HONORABLE D. DUFF MCKEE
SENIOR DISTRICT JUDGE PRESIDING

*Given or covered
W. Duff*

PREPROOF INSTRUCTIONS

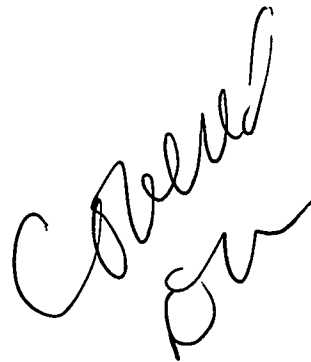
INSTRUCTION NO. _____

Now that you have been sworn as jurors to try this case, I want to go over with you what will be happening. I will describe how the trial will be conducted and what we will be doing. At the end of the trial, I will give you more detailed guidance on how you are to reach your decision.

Because the state has the burden of proof, it goes first. After the state's opening statement, the defense may make an opening statement, or may wait until the state has presented its case.

The state will offer evidence that it says will support the charge(s) against the defendant. The defense may then present evidence, but is not required to do so. If the defense does present evidence, the state may then present rebuttal evidence. This is evidence offered to answer the defense's evidence.

After you have heard all the evidence, I will give you additional instructions on the law. After you have heard the instructions, the state and the defense will each be given time for closing arguments. In their closing arguments, they will summarize the evidence to help you understand how it relates to the law. Just as the opening statements are not evidence, neither are the closing arguments. After the closing arguments, you will leave the courtroom together to make your decision. During your deliberations, you will have with you my instructions, the exhibits admitted into evidence and any notes taken by you in court.

A handwritten signature in black ink, appearing to read "C. J. [unclear]" or similar, written diagonally.

INSTRUCTION NO. _____

This criminal case has been brought by the State of Idaho. I will sometimes refer to the State as the prosecution.

The defendant is charged by the State of Idaho with: POSSESSION OF A CONTROLLED SUBSTANCE WITH THE INTENT TO DELIVER, a violation of the law. The charge against the defendant is contained in the Information, which has already been read to you.

To this charge, the defendant has entered a plea of not guilty.

The Information is simply a description of the charge; it is not evidence.

A handwritten signature in cursive script, likely of the judge, is written diagonally across the lower right portion of the page.

INSTRUCTION NO. _____

Under our law and system of justice, the defendant is presumed to be innocent. The presumption of innocence means two things.

First, the state has the burden of proving the defendant guilty. The state has that burden throughout the trial. The defendant is never required to prove his innocence, nor does the defendant ever have to produce any evidence at all.

Second, the state must prove the alleged crime beyond a reasonable doubt. A reasonable doubt is not a mere possible or imaginary doubt. It is a doubt based on reason and common sense. It may arise from a careful and impartial consideration of all the evidence, or from lack of evidence. If after considering all the evidence you have a reasonable doubt about the defendant's guilt, you must find the defendant not guilty.

A handwritten signature in black ink, appearing to read "J. J. [unclear]", is written diagonally across the lower right portion of the page.

INSTRUCTION NO. _____

Your duties are to determine the facts, to apply the law set forth in my instructions to those facts, and in this way to decide the case. In so doing, you must follow my instructions regardless of your own opinion of what the law is or should be, or what either side may state the law to be. You must consider them as a whole, not picking out one and disregarding others. The order in which the instructions are given has no significance as to their relative importance. The law requires that your decision be made solely upon the evidence before you. Neither sympathy nor prejudice should influence you in your deliberations. Faithful performance by you of these duties is vital to the administration of justice.

In determining the facts, you may consider only the evidence admitted in this trial. This evidence consists of the testimony of the witnesses, the exhibits offered and received, and any stipulated or admitted facts. The production of evidence in court is governed by rules of law. At times during the trial, an objection may be made to a question asked a witness, or to a witness' answer, or to an exhibit. This simply means that I am being asked to decide a particular rule of law. Arguments on the admissibility of evidence are designed to aid the Court and are not to be considered by you nor affect your deliberations. If I sustain an objection to a question or to an exhibit, the witness may not answer the question or the exhibit may not be considered. Do not attempt to guess what the answer might have been or what the exhibit might have shown. Similarly, if I tell you not to consider a particular statement or exhibit you should put it out of your mind, and not refer to it or rely on it in your later deliberations.

During the trial I may have to talk with the parties about the rules of law which should apply in this case. Sometimes we will talk here at the bench. At other times I will excuse you from the courtroom so that you can be comfortable while we work out any problems. You are not to speculate about any such discussions. They are necessary from time to time and help the trial run more smoothly.

Some of you have probably heard the terms “circumstantial evidence,” “direct evidence” and “hearsay evidence.” Do not be concerned with these terms. You are to consider all the evidence admitted in this trial.

However, the law does not require you to believe all the evidence. As the sole judges of the facts, you must determine what evidence you believe and what weight you attach to it.

There is no magical formula by which one may evaluate testimony. You bring with you to this courtroom all of the experience and background of your lives. In your everyday affairs you determine for yourselves whom you believe, what you believe, and how much weight you attach to what you are told. The same considerations that you use in your everyday dealings in making these decisions are the considerations which you should apply in your deliberations.

In deciding what you believe, do not make your decision simply because more witnesses may have testified one way than the other. Your role is to think about the testimony of each witness you heard and decide how much you believe of what the witness had to say.

A witness who has special knowledge in a particular matter may give an opinion on that matter. In determining the weight to be given such opinion, you should consider the qualifications and credibility of the witness and the reasons given for the opinion. You are not bound by such opinion. Give it the weight, if any, to which you deem it entitled.

A handwritten signature in black ink, appearing to be 'J. J. Jones', written in a cursive style.

INSTRUCTION NO. _____

During the course of this trial, [including the jury selection process,] you are instructed that you are not to discuss this case among yourselves or with anyone else, including any use of email, text messaging, tweeting, blogging, electronic bulletin boards, or any other form of communication, electronic or otherwise. Do not conduct any personal investigation or look up any information from any source, including the Internet. Do not form an opinion as to the merits of the case until after the case has been submitted to you for your determination.

*Covered
Wm*

INSTRUCTION NO. _____

If during the trial I may say or do anything which suggests to you that I am inclined to favor the claims or position of any party, you will not permit yourself to be influenced by any such suggestion. I will not express nor intend to express, nor will I intend to intimate, any opinion as to which witnesses are or are not worthy of belief; what facts are or are not established; or what inferences should be drawn from the evidence. If any expression of mine seems to indicate an opinion relating to any of these matters, I instruct you to disregard it. ✕

I may at times use the word "victim" in these instructions or in the course of this trial. This word is used only to refer to a person or persons who are alleged to have been victimized, and is used only for convenience. It does not indicate any opinion on my part that a person is a victim, or that the defendant has committed an offense. Whether a person is a victim, and whether the defendant is guilty of any offense, are matters for you alone to determine based on the evidence presented at trial.

*modified
& given*

INSTRUCTION NO. _____

Do not concern yourself with the subject of penalty or punishment. That subject must not in any way affect your verdict. If you find the defendant guilty, it will be my duty to determine the appropriate penalty or punishment.

*Given
for*

INSTRUCTION NO. _____

If you wish, you may take notes to help you remember what witnesses said. If you do take notes, please keep them to yourself until you and your fellow jurors go to the jury room to decide the case. You should not let note-taking distract you so that you do not hear other answers by witnesses. When you leave at night, please leave your notes in the jury room.

If you do not take notes, you should rely on your own memory of what was said and not be overly influenced by the notes of other jurors. In addition, you cannot assign to one person the duty of taking notes for all of you.

*Overed
for*

INSTRUCTION NO. _____

It is important that as jurors and officers of this court you obey the following instructions at any time you leave the jury box, whether it be for recesses of the court during the day or when you leave the courtroom to go home at night.

Do not discuss this case during the trial with anyone, including any of the attorneys, parties, witnesses, your friends, or members of your family. “No discussion” also means no emailing, text messaging, tweeting, blogging, posting to electronic bulletin boards, and any other form of communication, electronic or otherwise.

Do not discuss this case with other jurors until you begin your deliberations at the end of the trial. Do not attempt to decide the case until you begin your deliberations.

I will give you some form of this instruction every time we take a break. I do that not to insult you or because I don’t think you are paying attention, but because experience has shown this is one of the hardest instructions for jurors to follow. I know of no other situation in our culture where we ask strangers to sit together watching and listening to something, then go into a little room together and not talk about the one thing they have in common: what they just watched together.

There are at least two reasons for this rule. The first is to help you keep an open mind. When you talk about things, you start to make decisions about them and it is extremely important that you not make any decisions about this case until you have heard all the evidence and all the rules for making your decisions, and you won’t have that until the very end of the trial. The second reason for the rule is that we want all of you working together on this decision when you deliberate. If you have conversations in groups of two or three during the trial, you won’t remember to repeat all of your thoughts and observations for the rest of your fellow jurors when you deliberate at the end of the trial.

Ignore any attempted improper communication. If any person tries to talk to you about this case, tell that person that you cannot discuss the case because you are a juror. If that person persists, simply walk away and report the incident to the bailiff.

Do not make any independent personal investigations into any facts or locations connected with this case. **Do not** look up any information from any source, including the Internet. **Do not** communicate any private or special knowledge about any of the facts of this case to your fellow jurors. **Do not** read or listen to any news reports about this case or about anyone involved in this case, whether those reports are in newspapers or the Internet, or on radio or television.

In our daily lives we may be used to looking for information on-line and to "Google" something as a matter of routine. Also, in a trial it can be very tempting for jurors to do their own research to make sure they are making the correct decision. You must resist that temptation for our system of justice to work as it should. I specifically instruct that you must decide the case only on the evidence received here in court. If you communicate with anyone about the case or do outside research during the trial it could cause us to have to start the trial over with new jurors and you could be held in contempt of court.

While you are actually deliberating in the jury room, the bailiff will confiscate all cell phones and other means of electronic communications. Should you need to communicate with me or anyone else during the deliberations, please notify the bailiff.

A handwritten signature in black ink, appearing to be "C. J. [unclear]" or similar, written diagonally across the bottom right of the page.

INSTRUCTION NO. 1

You have now heard all the evidence in the case. My duty is to instruct you as to the law.

You must follow all the rules as I explain them to you. You may not follow some and ignore others. Even if you disagree or don't understand the reasons for some of the rules, you are bound to follow them. If anyone states a rule of law different from any I tell you, it is my instruction that you must follow.

INSTRUCTION NO. 2

Under our law and system of justice, the defendant is presumed to be innocent. The presumption of innocence means two things.

First, the state has the burden of proving the defendant guilty. The state has that burden throughout the trial. The defendant is never required to prove his innocence, nor does the defendant ever have to produce any evidence at all.

Second, the state must prove the alleged crime beyond a reasonable doubt. A reasonable doubt is not a mere possible or imaginary doubt. It is a doubt based on reason and common sense. It may arise from a careful and impartial consideration of all the evidence, or from lack of evidence. If after considering all the evidence you have a reasonable doubt about the defendant's guilt, you must find the defendant not guilty.

INSTRUCTION NO. 3

As members of the jury it is your duty to decide what the facts are and to apply those facts to the law that I have given you. You are to decide the facts from all the evidence presented in the case.

The evidence you are to consider consists of:

1. sworn testimony of witnesses;
2. exhibits which have been admitted into evidence; and
3. any facts to which the parties have stipulated.

Certain things you have heard or seen are not evidence, including:

1. arguments and statements by lawyers. The lawyers are not witnesses. What they say in their opening statements, closing arguments and at other times is included to help you interpret the evidence, but is not evidence. If the facts as you remember them differ from the way the lawyers have stated them, follow your memory;
2. testimony that has been excluded or stricken, or which you have been instructed to disregard;
3. anything you may have seen or heard when the court was not in session.

INSTRUCTION NO. 4

In every crime or public offense there must exist a union or joint operation of act and intent.

INSTRUCTION NO. 5

*With intent
to deliver*

In order for the defendant to be guilty of Possession of a Controlled Substance, the state must prove each of the following:

1. On or about August 1, 2012
2. in the state of Idaho
3. the defendant RICHARD GLENN MORRIS possessed any amount of Marijuana, and
4. the defendant either knew it was Marijuana or believed it was a controlled substance, and
5. the defendant intended to deliver that substance to another.

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

The possession of one or more controlled substances, even in multiple packages, is not sufficient by itself to prove an intent to deliver. The state must prove one or more additional circumstances from which you can infer that intent. The additional circumstances could include, but are not limited to, the possession of controlled substances in quantities greater than would be kept for personal use; or the existence of items customarily used to weigh, package, or process controlled substances; or the existence of money and/or records which indicate sales or deliveries of controlled substances.

You are not required to infer an intent to deliver from any such additional circumstances. Whether any such additional circumstances have been proven, whether an intent to deliver should be inferred from them, and the weight to be given such inference are for you to decide. You should consider all of the evidence when deciding whether the state has proven an intent to deliver beyond a reasonable doubt.

INSTRUCTION NO. 6

If your unanimous verdict is that the defendant is not guilty of Possession of a Controlled Substance with the Intent to Deliver, you must acquit him of that charge. In that event, you must next consider the included offense of Possession of a Controlled Substance.

INSTRUCTION NO. 7

In order for the defendant to be guilty of Possession of a Controlled Substance, the state must prove each of the following:

1. On or about August 1, 2012
2. in the state of Idaho
3. the defendant Richard Glenn Morris possessed any amount of Marijuana, and
4. the defendant either knew it was Marijuana or believed it was a controlled substance.

If any of the above has not been proven beyond a reasonable doubt, you must find defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

INSTRUCTION NO. 8

It is alleged that the crime charged was committed “on or about” August 1, 2012. If you find the crime was committed, the proof need not show that it was committed on that precise date.

INSTRUCTION NO. 9

A person has “possession” of something if the person knows of its presence and has physical control of it, or has the power and intention to exercise control it. More than one person can be in possession of something if each knows of its presence and both have the power and intention to control it.

INSTRUCTION NO. 10

If it becomes necessary during your deliberations to communicate with me, you may send a note signed by one or more of you to the bailiff. You should not try to communicate with me by any means other than such a note.

During your deliberations, you are not to reveal to anyone how the jury stands on any of the questions before you, numerically or otherwise, unless requested to do so by me.

Even though a verbatim record of these proceedings is being made, no written transcript is available of these proceedings. You should listen to the testimony as it given.

INSTRUCTION NO. 11

I have outlined for you the rules of law applicable to this case and have told you of some of the matters which you may consider in weighing the evidence to determine the facts. In a few minutes counsel will present their closing remarks to you, and then you will retire to the jury room for your deliberations.

The arguments and statements of the attorneys are not evidence. If you remember the facts differently from the way the attorneys have stated them, you should base your decision on what you remember.

The attitude and conduct of jurors at the beginning of your deliberations are important. It is rarely productive at the outset for you to make an emphatic expression of your opinion on the case or to state how you intend to vote. When you do that at the beginning, your sense of pride may be aroused, and you may hesitate to change your position even if shown that it is wrong. Remember that you are not partisans or advocates, but are judges. For you, as for me, there can be no triumph except in the ascertainment and declaration of the truth.

Consult with one another. Consider each other's views, and deliberate with the objective of reaching an agreement, if you can do so without disturbing your individual judgment. Each of you must decide this case for yourself; but you should do so only after a discussion and consideration of the case with your fellow jurors.

However, none of you should surrender your honest opinion as to the weight or effect of evidence or as to the innocence or guilt of the defendant because the majority of the jury feels otherwise or for the purpose of returning a unanimous verdict.

INSTRUCTION NO. 12

Upon retiring to the jury room, select one of you as a presiding officer, who will preside over your deliberations. It is that person's duty to see that discussion is orderly; that the issues submitted for your decision are fully and fairly discussed; and that every juror has a chance to express himself or herself upon each question.

In this case, your verdict must be unanimous. When you all arrive at a verdict, the presiding juror will sign it and you will return it into open court.

Your verdict in this case cannot be arrived at by chance, by lot, or by compromise.

If, after considering all of the instructions in their entirety, and after having fully discussed the evidence before you, the jury determines that it is necessary to communicate with me, you may send a note by the bailiff. You are not to reveal to me or anyone else how the jury stands until you have reached a verdict or unless you are instructed by me to do so.

A verdict form suitable to any conclusion you may reach will be submitted to you with these instructions.

DATED this _____ day of April, 2013.

D. Duff McKee
Senior District Judge

APR 23 2013

CHRISTOPHER D. RICH, Clerk
By CINDY HO
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff,

vs.

RICHARD GLENN MORRIS,

Defendant.

Case No. CR-FE-2012-0013672

VERDICT

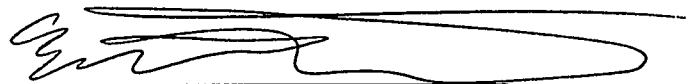
We the jury returns our verdict in the above entitled matter as follows:

☐ Guilty of POSSESSION OF A CONTROLLED SUBSTANCE WITH THE
INTENT TO DELIVER, as charged in the Information;

☒ Guilty of POSSESSION OF A CONTROLLED SUBSTANCE, a lesser included
offense to the crime charged in the Information;

☐ Not Guilty of any crime charged or included in the Information.

Dated this 23 day of April 2013.



PRESIDING JUROR

<u>Time</u>	<u>Speaker</u>	<u>Note</u>
<u>2:11:09 PM</u>		
<u>2:11:11 PM</u>	Case Called	State v. Richard Morris FE-12-13672 SH
<u>2:11:16 PM</u>	States Attorney	Scott Bandy
<u>2:11:18 PM</u>	Defense Attorney	Jon Loschi
<u>2:11:28 PM</u>		Parties waive having court reporter
<u>2:12:13 PM</u>	Judge	Makes Record of Trial Proceedings
<u>2:12:55 PM</u>	States Attorney	Rec's
<u>2:15:33 PM</u>	Defense Attorney	Rec's
<u>2:20:37 PM</u>	Defendant	Statement
<u>2:23:13 PM</u>	Judge	Sentence
<u>2:28:21 PM</u>		End of Case
<u>2:28:22 PM</u>		

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT, ADA COUNTY

☒ JUDGMENT OF CONVICTION

☐ WITHHELD JUDGMENT

☒ PROBATION ORDER

Expires _____

FILED 5/2/13 AT 2:25p M.
CHRISTOPHER D. RICH,
CLERK OF THE DISTRICT COURT
BY Cindy Ho
Deputy

STATE OF IDAHO vs.

Richard G. MORRIS

CASE NO. FE-12-13672 Tape _____

Prosecuting Agency: ☒ AC ☐ BC ☐ EC ☐ GC ☐ MC

State's Attorney: _____

DEFENDANT having been charged with the following offenses:

Count 1. Poss of Controlled Subst 37-2732(c)(3)

Count 2. _____ Count 4. _____

DEFENDANT WAS: ☒ Present ☒ In Custody ☐ Not Present ☐ Interpreter Present ☒ Advised of all rights and penalties per ICR 5.11, IMCR 5(f)

☒ Represented by: Jan Losch COURT ENTERS JUDGMENT AFTER: ☐ Vol Guilty Plea ☒ Trial - Found Guilty

Defendant Waived Right: ☐ To All Defenses ☐ Against Self-Incrimination ☐ To Jury Trial ☐ To Confront and Cross Examine Accuser(s) ☐ To Counsel

☐ ORDERED: DEFENDANT'S DRIVING PRIVILEGES SUSPENDED _____ days beginning _____; or

☐ CONSECUTIVE TO ANY CURRENT SUSPENSION ☐ Absolute Suspension _____ days ☐ Interlock from _____ to _____

☒ ORDERED: DEFENDANT TO PAY TO THE CLERK: ☐ Apply cash bond \$ _____

Count 1: Fine/Penalty \$ 500 W/ \$ _____ Suspended + CT Costs \$ yes = \$ 692.50

Count 2: Fine/Penalty \$ _____ W/ \$ _____ Suspended + CT Costs \$ _____ = \$ _____

Count 3: Fine/Penalty \$ _____ W/ \$ _____ Suspended + CT Costs \$ _____ = \$ _____

Count 4: Fine/Penalty \$ _____ W/ \$ _____ Suspended + CT Costs \$ _____ = \$ _____

☒ Reimburse Public Defender \$ 1000.00 ☐ Workers' Comp (\$.60/hr) \$ _____ TOTAL = \$ 1692.50

Restitution \$ _____ Defendant shall make _____ EQUAL MONTHLY PAYMENTS BEGINNING ONE MONTH FROM TODAY

☒ ORDERED: DEFENDANT TO BE INCARCERATED IN: ☒ County Jail ☐ Juvenile Detention Center

Count 1: 365 days W/ 128 Suspended - Credit 237 Total = 0 TOTAL DAYS TO SERVE = _____

Count 2: _____ days W/ _____ Suspended - Credit _____ Total = _____ ☐ Concurrent to Case number(s): _____

Count 3: _____ days W/ _____ Suspended - Credit _____ Total = _____ ☐ Concurrent ☐ Consecutive

Count 4: _____ days W/ _____ Suspended - Credit _____ Total = _____ to all cases to any other cases

☐ _____ days must be fully completed, with **NO OPTIONS** available. ☐ _____ days must be fully completed, with **INTERIM JAIL** available.

☐ Pay or Stay \$ _____ ☐ In-Custody _____ SAP _____ ABC ☐ Interlock Funds (after use of any cafeteria funds)

☐ If approved by the Ada County Sheriff's Office, defendant is allowed to serve in _____ County at defendant's expense.

☐ **THE FOLLOWING** options offered by the County Sheriff are available to the defendant only **IF** defendant meets requirements of the program.

☐ All Options _____ days; ☐ If defendant is in custody, release and re-book for any options.

☐ Any combo of the following Options: Wk Rls _____ days; SLD _____ days; SCS _____ hours; Hs. Arr. (2/1) _____ days (1/1) _____ days

☒ PROBATION CONDITIONS: Supervised Probation Expires: _____ Unsupervised Probation Expires: 8-21-2023

☒ Commit no new crimes ☐ Classes and treatment per Probation Officer Discretionary jail days to Probation Officer _____

Programs Ordered: (Defined on Responsibilities Form) ☐ No Alcohol Poss/Consume ☐ Refuse no evidentiary test for drugs/alcohol (BAC)

☐ Alcohol/Drug Ed hrs _____ ☐ Anger Management hrs _____ ☐ Tobacco Ed hrs _____ ☐ Driving School hrs _____

☐ Victim's Panel ☐ Theft classes hrs _____ ☐ Domestic Violence Treatment Weeks _____ ☐ Cog Self Change _____

☐ OTHER _____

☒ Defendant accepted terms and conditions of probation and received a copy of this form and supplemental Notice of Responsibilities after Sentencing.

☐ PLEA AND SENTENCE VIA DEFENSE COUNSEL AUTHORIZED. ☐ IN CHAMBERS PER WRITTEN GUILTY PLEA

Richard G. Morris Jan Losch #122 5/2/13

DEFENDANT JUDGE Number Date of Order

☐ Release Defendant this case only 000191

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT, ADA COUNTY

☒ **JUDGMENT OF CONVICTION**

☐ **WITHHELD JUDGMENT**

☒ **PROBATION ORDER**

Expires _____

STATE OF IDAHO vs.

Richard G. Morris

FILED	<u>2/12/14</u>	AT	<u>11:13 AM</u>
CHRISTOPHER D. RICH			
CLERK OF THE DISTRICT COURT			
BY	<u>Cindy</u>		
	Deputy		

CASE NO. FE 12-13672

Tape _____

Prosecuting Agency: ☒ AC ☐ BC ☐ EC ☐ GC ☐ MC

State's Attorney: _____

DEFENDANT having been charged with the following offenses:

Count 1. Poss of Controlled Subst 37-2732(c)(3) Count 3. _____

Count 2. _____ Count 4. _____

DEFENDANT WAS: ☒ Present ☒ In Custody ☐ Not Present ☐ Interpreter Present ☒ Advised of all rights and penalties per ICR 5,11, IMCR 5(f)

☒ Represented by: Jon Loschi COURT ENTERS JUDGMENT AFTER: ☐ Vol Guilty Plea ☒ Trial - Found Guilty

Defendant Waived Right: ☐ To All Defenses ☐ Against Self-Incrimination ☐ To Jury Trial ☐ To Confront and Cross Examine Accuser(s) ☐ To Counsel

☐ **ORDERED: DEFENDANT'S DRIVING PRIVILEGES SUSPENDED** _____ days beginning _____; or

☐ **CONSECUTIVE TO ANY CURRENT SUSPENSION** ☐ Absolute Suspension _____ days ☐ Interlock from _____ to _____

☒ **ORDERED: DEFENDANT TO PAY TO THE CLERK:** ☐ Apply cash bond \$ _____

Count 1: Fine/Penalty \$ 500 W/ \$ _____ Suspended + CT Costs \$ yes = \$ 692.50

Count 2: Fine/Penalty \$ _____ W/ \$ _____ Suspended + CT Costs \$ _____ = \$ _____

Count 3: Fine/Penalty \$ _____ W/ \$ _____ Suspended + CT Costs \$ _____ = \$ _____

Count 4: Fine/Penalty \$ _____ W/ \$ _____ Suspended + CT Costs \$ _____ = \$ _____

☒ Reimburse Public Defender \$ 1,600.00 ☐ Workers' Comp (\$60/hr) \$ _____ TOTAL = \$ 1,692.50

Restitution \$ _____ Defendant shall make _____ **EQUAL MONTHLY PAYMENTS BEGINNING ONE MONTH FROM TODAY**

☒ **ORDERED: DEFENDANT TO BE INCARCERATED IN:** ☒ County Jail ☐ Juvenile Detention Center

Count 1: 365 days W/ 128 Suspended - Credit 237 Total = 0 TOTAL DAYS TO SERVE = _____

Count 2: _____ days W/ _____ Suspended - Credit _____ Total = _____ ☐ Concurrent to Case number(s): _____

Count 3: _____ days W/ _____ Suspended - Credit _____ Total = _____

Count 4: _____ days W/ _____ Suspended - Credit _____ Total = _____ ☐ Concurrent ☐ Consecutive

_____ days must be fully completed, with **NO OPTIONS** available. _____ days must be fully completed, with **INTERIM JAIL** available.

☐ Pay or Stay \$ _____ ☐ In-Custody _____ SAP _____ ABC ☐ Interlock Funds (after use of any cafeteria funds)

☐ If approved by the Ada County Sheriff's Office, defendant is allowed to serve in _____ County at defendant's expense.

☐ **THE FOLLOWING** options offered by the County Sheriff are available to the defendant only **IF** defendant meets requirements of the program.

☐ All Options _____ days; ☐ If defendant is in custody, release and re-book for any options.

☐ Any combo of the following Options: Wk Rls _____ days; SLD _____ days; SCS _____ hours; Hs. Arr. (2/1) _____ days (1/1) _____ days

☒ **PROBATION CONDITIONS:** Supervised Probation Expires: _____ Unsupervised Probation Expires: 8-21-2023

☒ Commit no new crimes ☐ Classes and treatment per Probation Officer Discretionary jail days to Probation Officer _____

Programs Ordered: (Defined on Responsibilities Form) ☐ No Alcohol Poss/Consume ☐ Refuse no evidentiary test for drugs/alcohol (BAC)

☐ Alcohol/Drug Ed hrs _____ ☐ Anger Management hrs _____ ☐ Tobacco Ed hrs _____ ☐ Driving School hrs _____

☐ Victim's Panel ☐ Theft classes hrs _____ ☐ Domestic Violence Treatment Weeks _____ ☐ Cog Self Change _____

☐ OTHER _____

☒ Defendant accepted terms and conditions of probation and received a copy of this form and supplemental Notice of Responsibilities after Sentencing.

☐ PLEA AND SENTENCE VIA DEFENSE COUNSEL AUTHORIZED. ☐ IN CHAMBERS PER WRITTEN GUILTY PLEA

DEFENDANT _____ JUDGE Moore #122 February 12, 2014

☐ Release Defendant this case only

000192

① This Amended Judgment issues in conjunction with the Court's Order in

CV PC 13-16494, granting post-conviction relief.

[REV 1-25-2011]

CERTIFICATE OF MAILING

I hereby certify that on this 13th day of February 2014, I mailed (served) a

true and correct copy of the within instrument to:

John C. DeFranco
ELLSWORTH, KALLAS, & DEFRANCO, PLLC
1031 E Park Blvd
Boise, ID 83712

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Electronic Mail
☐ Facsimile

Jonathan Loschi
ADA COUNTY PUBLIC DEFENDER
VIA INTERDEPARTMENTAL MAIL

☐ U.S. Mail, Postage Prepaid
☒ Hand Delivered
☐ Electronic Mail
☐ Facsimile

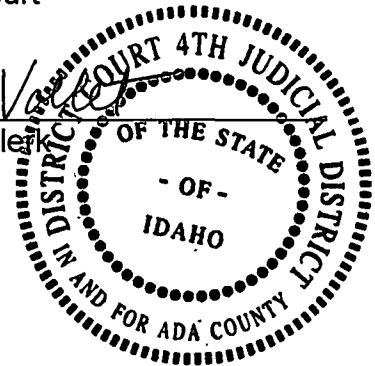
Daniel Dinger
ADA COUNTY PROSECUTING ATTORNEY
VIA INTERDEPARTMENTAL MAIL

☐ U.S. Mail, Postage Prepaid
☒ Hand Delivered
☐ Electronic Mail
☐ Facsimile

CHRISTOPHER D. RICH
Clerk of the District Court

By: Charlotte V. [Signature]

Deputy Court Clerk



172

NO. _____ FILED 2014
A.M. _____ P.M.

MAR 03 2014

CHRISTOPHER D. RICH, Clerk
By AMY LANG
DEPUTY

JOHN C. DEFRANCO, ESQ. ISB 4953
ELLSWORTH, KALLAS & DEFRANCO, P.L.L.C.
1031 E. Park Blvd.
Boise, ID 83712
Phone: (208) 336-1843
Fax: (208) 345-8945
E-mail: jcd@greyhawklaw.com

Attorney for Appellant

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,)	
)	
Plaintiff,)	
	)	Case No. CR FE 2012 13672
vs.)	
	)	NOTICE OF APPEAL
)	
RICHARD G. MORRIS,)	
)	
Defendant.)	
_____)	

TO: THE ABOVE NAMED RESPONDENT, DEPUTY ADA COUNTY
PROSECUTING ATTORNEY, DANIEL DINGER
200 WEST FRONT STREET 3RD FLOOR, BOISE, IDAHO 83702
AND THE CLERK OF THE ABOVE ENTITLED COURT.

NOTICE IS HEREBY GIVEN THAT:

1. The above named appellant, RICHARD G. MORRIS, appeals against the above named respondent to the District Court from the Judgment of Conviction, entered in the above-entitled action on the 12th day of February, 2014, before the Honorable Judge, Melissa Moody, presiding.
2. That the party has a right to appeal to the District, and the Judgment described in paragraph one (1) above is appealable pursuant to Idaho Misdemeanor Criminal Rule

[Handwritten signature]

ORIGINAL
000194

17.

3. Defendant does not request the entire reporter's standard transcript as defined in Rule 25(a) I.A.R.

4. Defendant does request the preparation of the following additional portions of the reporter's transcript:

a. Motion to Suppress held on 12/14/2012. Court Reporter: Mia Martorelli, 150 pages.

5. Defendant requests that the Clerk's Record contain only those documents automatically included as set out in I.A.R. 28(b)(2), including any Jury Instructions requested and given, and Pre-sentence Investigation Report.

6. I certify:

a. That a copy of this "Notice of Appeal" has been served on the Trial Court Administrator's Office – Court Reporter Mia Martorelli.

b. That the Appellant is exempt from paying the estimated transcript fee, because he is an indigent person and is unable to pay said fee.

c. That the Appellant is exempt from paying the estimated fee for preparation of the Clerk's Record, because he is an indigent person and is unable to pay said fee.

d. That the Appellant is exempt from paying the appellate filing fee, because he is indigent, and is unable to pay said fee.


e. That service has been made upon all parties required to be served pursuant to I.A.R. 20.

7. Appellant anticipates raising issues including, but not limited to:

- a. Under Idaho Law Did The District Court Abuse Its Discretion When It Denied Defendant's Motion to Suppress Evidence?

Dated This 3rd day of March, 2014.

ELLSWORTH KALLAS & DEFRANCO, P.L.L.C.

By 
John C. DeFranco,

CERTIFICATE OF SERVICE

I hereby certify that on the 28th, day of February, 2014, I served a true and correct copy of the within and foregoing document by the method indicated below an addressed to the following:

Ms. Daniel R. Dinger
Deputy Prosecuting Attorney for Ada County
200 W. Front Street, 3rd Floor, Boise ID 83702

☐ U.S. Mail
☐ Facsimile
☒ Hand Delivery

Trial Court Administrator's Office
200 W. Front Street, 4th Floor, Boise, ID 83702
Court Reporter Mia Martorelli

☐ U.S. Mail
☐ Facsimile
☒ Hand Delivery



Megan Niece

TO: Clerk of the Court
Idaho Supreme Court
451 West State Street
Boise, Idaho 83720
(208) 334-2616

APR 10 2014

CHRISTOPHER D. RICH, Clerk
By **KELLE WEGENER**
DEPUTY

IN THE SUPREME COURT OF THE STATE OF IDAHO

----- x Docket No. 41933
STATE OF IDAHO, :
 :
 :
 Plaintiff-Respondent, :
 :
 :
 vs. :
 :
 :
 RICHARD GLENN MORRIS, :
 :
 :
 Defendant-Appellant :
----- x


NOTICE OF TRANSCRIPT OF 138 PAGES LODGED

Appealed from the District Court of the Fourth Judicial
District of the State of Idaho, in and for the County of Ada,
Honorable Melissa Moody, District Court Judge.

This transcript contains:

12-14-12 Motion to Suppress Hearing

DATE: April 9, 2014



Tiffany Fisher, Official Court Reporter
Official Court Reporter,
Judge Melissa Moody
Ada County Courthouse
Idaho Certified Shorthand Reporter No. 979
Registered Professional Reporter

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff-Respondent,

vs.

RICHARD GLENN MORRIS,

Defendant-Appellant.

Supreme Court Case No. 41933

CERTIFICATE OF EXHIBITS

I, CHRISTOPHER D. RICH, Clerk of the District Court of the Fourth Judicial District of the State of Idaho in and for the County of Ada, do hereby certify:

That the attached list of exhibits is a true and accurate copy of the exhibits being forwarded to the Supreme Court on Appeal. It should be noted, however, that the following exhibits will be retained at the District Court clerk's office and will be made available for viewing upon request.

1. State's Exhibit 2 – Bag of Marijuana.

I FURTHER CERTIFY, that the following documents will be submitted as CONFIDENTIAL EXHIBITS to the Record:

1. Motion for Leave to Present Testimony to Clarify the Record (Filed Under Seal), filed February 28, 2013.
2. Motion in Limine to Exclude Reference to Certain Facts (Filed Under Seal), filed April 1, 2013.

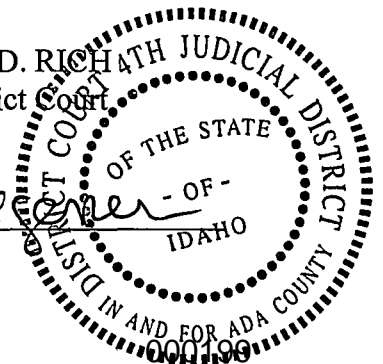
I FURTHER CERTIFY, that the following documents will be submitted as EXHIBITS to the Record:

1. Transcript of Preliminary Hearing held October 2, 2012, Boise, Idaho, filed November 7, 2012.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 10th day of April, 2014.

CHRISTOPHER D. RICH
Clerk of the District Court

By K. W. [Signature]
Deputy Clerk



CERTIFICATE OF EXHIBITS

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

HONORABLE MELISSA MOODY
CLERK: Cindy Ho
CT REPORTER: Mia Martorelli

12/14/12

THE STATE OF IDAHO,

Plaintiff,

vs.

RICHARD GLENN MORRIS,

Defendant.

Case No. CR-FE-2012-0013672

EXHIBIT LIST

Counsel for State: Daniel R. Dinger

Counsel for Defendant: Jonathan D Loschi

THE STATE OF IDAHO,

Plaintiff,

vs.

CRYSTAL ROSE PHILLIPS,

Defendant.

Case No. CR-FE-2012-0012803

EXHIBIT LIST

Counsel for State: Daniel R. Dinger

Counsel for Defendant: Layne Davis

DEFENDANT'S EXHIBITS

Admitted Date Admit

A.	Photo	Admitted	12/14/12
B.	Photo	Admitted	12/14/12
C.	Photo	Admitted	12/14/12

EXHIBIT LIST

000200

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

HONORABLE D. DUFF MCKEE
CLERK: Janine Korsen/Cindy Ho
CT REPORTER: Kim Madsen

April 22, 2013
April 23, 2013

THE STATE OF IDAHO,

Plaintiff,

vs.

RICHARD GLENN MORRIS,

Defendant.

Case No. CR-FE-2012-0013672

EXHIBIT LIST

Counsel for State: Daniel R. Dinger

Counsel for Defendant: Jonathan D Loschi

STATE'S EXHIBITS / EVIDENCE

Admitted

Date Admit

(If evidence include property number)

1.	Incident History	Admitted	4-22-2013
2.	Bag of Marijuana	Admitted	4-23-2013
3.	Audio CD of Telephone Conversation	Admitted	4-23-2013

EXHIBIT LIST

000201

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff-Respondent,

vs.

RICHARD GLENN MORRIS,

Defendant-Appellant.

Supreme Court Case No. 41933

CERTIFICATE OF SERVICE

I, CHRISTOPHER D. RICH, the undersigned authority, do hereby certify that I have personally served or mailed, by either United States Mail or Interdepartmental Mail, one copy of the following:

CLERK'S RECORD AND REPORTER'S TRANSCRIPT

to each of the Attorneys of Record in this cause as follows:

JOHN C. DeFRANCO

ATTORNEY FOR APPELLANT

BOISE, IDAHO

LAWRENCE G. WASDEN

ATTORNEY FOR RESPONDENT

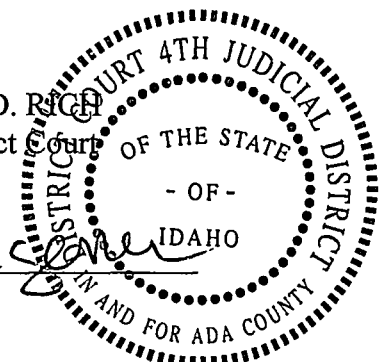
BOISE, IDAHO

Date of Service: APR 10 2014

CERTIFICATE OF SERVICE

CHRISTOPHER D. RICH
Clerk of the District Court

By K. W. [Signature]
Deputy Clerk



000202

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff-Respondent,

vs.

RICHARD GLENN MORRIS,

Defendant-Appellant.

Supreme Court Case No. 41933

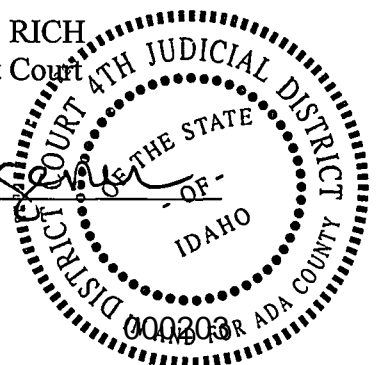
CERTIFICATE TO RECORD

I, CHRISTOPHER D. RICH, Clerk of the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada, do hereby certify that the above and foregoing record in the above-entitled cause was compiled under my direction as, and is a true and correct record of the pleadings and documents that are automatically required under Rule 28 of the Idaho Appellate Rules, as well as those requested by Counsel.

I FURTHER CERTIFY, that the Notice of Appeal was filed in the District Court on the 3rd day of March, 2014.

CHRISTOPHER D. RICH
Clerk of the District Court

By K. W. [Signature]
Deputy Clerk



CERTIFICATE TO RECORD